

TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, August 24, 2010

MEMBERS PRESENT – Fred Jay Meyer (Chair), Willie Audet, Stan Given, Jonathan Berry (Associate), Don Russell (Associate)

MEMBERS ABSENT – Dennis Keeler (Vice-Chair), Jim Thibodeau

STAFF PRESENT – Amanda Stearns, Community Development Director and Acting Code Enforcement Officer

1. Call to Order

The meeting was called to order at 6:32 pm.

Jonathan Berry and Don Russell were appointed as voting members.

2. Discussion and adoption of the minutes of the previous hearing(s).

Willie Audet moved to approve the minutes of the April 25 meeting; Stan Given seconded. Motion carried 4-0 (Meyer abstained).

Jay Meyer made amendments to the June 22 minutes. Those minutes and the July 20 minutes will be approved at a later meeting.

3. Discussion and finding that all applications presented for this hearing are complete.

There was no discussion on this item.

4. Tabled Applications

- a. 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 FROM JULY 20, 2010.**
- b. Jeff Mason** - Is requesting Conditional Use under Section 6.2a for an expansion at 141 Gray Road, Parcel U42-010 zoned VMU, RP and LR. **TABLED FROM JULY 27, 2010.**
- c. Traynor Family Residence LLC**- Is requesting Conditional Use under Section 6.2b, 6.11 8.3, and 8.7 for an expansion at 20 Burgess St. Parcel U16-044, zoned RA/Shoreland Zone LR. Comments are limited as the applicant has requested the Board limit the hearing to the applicability of Section 7.25.3., related to coastal bluffs. **TABLED FROM JULY 27, 2010.**

Stan Given moved to table items 4 a, b and c; Jon Berry seconded. Motion carried 5-0.

- d. Ms. Betsey Greenstein** - Is requesting Conditional Use under Section 6.9 to tear down and rebuild an addition at 2 Laurel Lane, Parcel U09-034, zoned "RA".
TABLED FROM JULY 27, 2010.

Buell Heminway, architect, presented the Board with supplemental material addressing some of the staff issues. This included a revised plot plan which has been modified to include the 2000 addition, the distance to the adjacent structure and the lot coverage calculations, showing the proposed lot coverage of 1384 sq feet. This includes the proposed porch and an existing shed on the property. He has verified the height of the building from the average grade as taken 20 feet out: it is 29 feet. He has submitted a photo showing that there is ample parking for 2 cars, as well as a photo of the north elevation. He also submitted a set of schematic elevations, with the old building profile superimposed on the proposed building profile.

Public comment period opened.

Carl Gercke of 4 Laurel Lane has not seen any of the materials and asked if the applicant was willing to share the plans.

Ms. Greenstein has shown the plan to most of her neighbors. She said it wasn't her original intention to rebuild the house; her desire is to open it up, put in a big kitchen and have it all open. It is 24 inches on center framing and she needs 16 inches on center, so she needs to reframe the entire structure. She is also changing the second floor knee walls. She handed Mr. Gercke a copy of the plans

Catherine Field of 4 Laurel Lane explained that she lives 20 feet away, in a house built along with the Greenstein home in 1910. She asked about the new 72 sq foot porch.

Ms. Greenstein indicated on the plan where the porch would be located. It will be adding a cover over the front door. It is open, not a room.

Mr. Gercke said the biggest potential impact on abutters would be the second story roof deck. He asked if that is a sitting area

Mrs. Greenstein said that is correct.

Mr. Gercke said these are nonconforming lots; his house is 6-8 feet from her property line. He is concerned with a significant degradation of his privacy with her deck overlooking his deck. The primary purpose of this is not to tear down and rebuild an addition, but tear down and rebuild the whole house.

Ms. Greenstein agreed with that statement, but said the addition built in 2000 will remain. It has 16 inches on center framing.

Jay Meyer asked Mr. Gercke the location of his home.

Mr. Gercke indicated the location of his home in relation to the Greenstein home on the plot plan. He asked if the roof deck counted toward the 30% lifetime expansion limit.

Mr. Heminway said his understanding was that it did not.

Willie Audet asked Amanda Stearns if that was correct.

Amanda Stearns said she hadn't reviewed that. She asked Mr. Heminway if, by his calculations, the deck could be included under that 30% limit.

Mr. Heminway wasn't sure.

Jay Meyer read Section 2.71: Floor Area, Gross: *The sum in square feet, of the total floor area of a building, as measured from the interior faces of the outside walls. In the Shoreland Zone, floor area shall include the horizontal area of any unenclosed portions of a structure such as porches and decks.*

Mr. Heminway said Code Enforcement Officer Al Farris told him that roof decks didn't count, as the roof is already there. The only horizontal expansion of the home is the covered porch.

Jay Meyer asked how the deck would affect the coverage if it were included.

Mr. Heminway didn't know what the total square footage of the deck was off the top of his head.

Willie Audet said 8x18 is 144 sq feet.

Mr. Heminway said if that is the case they would not be okay by floor area.

Ms. Field said they are literally 10 feet apart and can hear everything in their house. Privacy is really important for good neighbors. The deck around the turret will be right in her face; it is on her side of the house. Right now the deck is just in front of the addition.

Willie Audet asked if that was the west elevation.

Mr. Heminway said yes.

Ms. Field said the expansion of the turret will affect them as well. That little bit of space will make a big difference. Their deck is not shown on the plan, and they really live on that deck 6 months of the year, with only a lilac hedge between the two properties. If there is a roof deck people on that deck will be looking down on them while they eat dinner on their deck.

Public comment period closed.

Ms. Greenstein said that will be a deck off the master bedroom, so she won't be doing a lot of entertaining off that deck.

Don Russell asked about the abutter's comment about the turret being in a different location.

Mr. Heminway said the footprint of the turret has expanded a tiny bit, only 3.5 sq feet. That was to get a more expansive inside, and make it a hexagon instead of an octagon. This will be 2x6 construction with 2x8 roof framing. That is the reason for the expansion, but it is still within the footprint of the building.

Stan Given was trying to determine the size of the deck.

Mr. Heminway said the deck is 8' x 18'. The roof deck is shown on the building plan submitted with the application.

Stan Given asked if the 8 foot dimension is out from the wall.

Mr. Heminway said it is from the framed wall to the railing. The 18 feet is along the length of the building. He thought it is between 144-150 sq feet.

Stan Given asked if the existing pre-2000 roof is coming down.

Mr. Heminway said it is, and it is being elevated a little bit. It is shown on the west elevation. It is still a 4/12 pitch; this is to get headroom in the living area below. It is more clearly shown on the north building elevation passed to the Board tonight.

Stan Given said only a small portion of this house is to remain.

Mr. Heminway said only the 2000 addition is staying, everything else is a tear off to the existing foundation and then a rebuild.

Willie Audet said in the materials submitted it says there is 30 feet from this building to the Gercke home. Ms. Field said it was 10 feet.

Mr. Heminway said the total distance between the homes is 30 feet, but that is his estimate based on the town's GIS website.

Willie Audet asked if they have properly addressed the question of adverse impact: have they taken photos from abutting properties.

Mr. Heminway said yes, some photos are in the submitted materials tonight. Ms. Greenstein has some photos showing the Gercke property and this one.

Ms. Greenstein showed the photo to Willie Audet and explained the location of the roof deck in relation to the photo and the Gercke home. This photo was taken from another neighbor's house and she indicated on the plan which house it was.

Willie Audet asked Amanda Stearns if they were clear on the expansion of roof decks.

Amanda Stearns referred them to definition 2.71 "Gross Floor Area"— it doesn't speak to upper level decks. She read the language again.

Willie Audet asked if she would include the deck in the limit.

Amanda Stearns said, based on this definition, she would. It doesn't refer to footprint.

Willie Audet said in this application it is not included.

Amanda Stearns said the plan in the packet talks about floor area expansion. Mr. Heminway calculated the current allowed expansion at 276.48 sq feet; they are proposing to expand by 229.56 sq feet, which leaves about 47 sq feet that could be added in floor area. You can't measure the volume of the deck as it is unenclosed.

Mr. Heminway said under the 2000 addition there was 154 sq feet they want to add, as it was uninhabitable space by international building code. They are raising the floor level in the 2000 addition to get living space in the basement, and he included that sq footage in the calculations of the proposed addition. This square footage is part of the footprint.

Don Russell asked if Al Farris was referring to the volumetric instead of floor area.

Mr. Heminway said no, Al Farris was talking about floor area.

Ms. Greenstein said Al Farris was very clear to her from the very beginning that she could add a roof deck and not include it in the calculations. The porch entry had to be calculated because it was adding to the footprint.

Jon Berry asked which provision of the shoreland zoning they are using for the definition of the 20% increase.

Amanda said Section 6.11 is the 30% expansion and has a note regarding foundations, in relation to what is included in the basement.

Jay Meyer spoke about the privacy issues raised by the abutters. Section 8.7a speaks to screening and buffers. He asked if it was practical here to add screening to the deck to shield it from the abutters.

Mr. Heminway thought it might be more practical to take that corner and instead say the deck goes to the first diagonal of the cupola, and then make the rest roof instead of deck. Screening the deck defeats the purpose of the view. If they end the deck to the right of the door in the cupola, that might answer the Gerckes' issue.

Ms. Greenstein was agreeable to that plan.

Jay Meyer thought that was a good concept, and may mitigate the floor area issue. He asked about the existing basement floor plan.

Mr. Heminway said the existing non-habitable remains non-habitable. They wanted to get another bedroom under the 2000 addition. They will restructure the floor to get 7.6' headroom in the "new habitable room". This adds 154 sq feet to the building, which wasn't counted before.

Ms. Greenstein said the prior owners occupied that as a bedroom, but shouldn't have.

Jay Meyer said it shows up as "bedroom" on the proposed plan. There is another bedroom directly above it.

Mr. Heminway said yes, that is in the 2000 addition.

Jay Meyer asked how they are getting the headroom.

Mr. Heminway said they are bumping up the floor in that area. It is within the footprint but will be new habitable sq footage, so he included it in the calculations.

Stan Given liked the new approach for the deck. He thought some new screening would block the view of the neighbors and not the front view. He thought that would be appropriate.

Willie Audet asked about the total expansion of the sq footage, they need to make sure it is correct.

Jay Meyer said he disagrees with Al Farris; he felt the definition regarding floor area is relatively clear. They would have to shrink the deck pretty significantly to reach 47 sq feet.

Mr. Heminway said he can address the screening, but didn't know how to address the area. He was told he could do this.

Jay Meyer explained that Al Farris doesn't bind the Board.

Jon Berry said, after reviewing all applicable definitions and sections, he felt the definition was very clear. He felt it would be a strained interpretation to get around that. He couldn't agree with Al Farris's interpretation. He suggested they approve the project as it is, minus the roof deck, so that the applicant can address the screening and sq footage and then come back with the deck separately.

Jay Meyer thought there could be several ways to address this, including finishing less of the area downstairs. He asked the applicant if they would like to have the opportunity to take another look at the plans.

Mr. Heminway said they would like to get an approval tonight, and then come back for the deck. They would like the opportunity to review precedent on this issue.

Don Russell asked about Section 6.11.

Jay Meyer said the 30% applies to both volume and floor area. The definition of floor area, as stated in Section 2.71, includes the horizontal floor area of unenclosed spaces, including porches and decks.

Mr. Heminway suggested getting rid of the 154 sq feet in the basement, leaving that uninhabitable. That opens up the sq footage. They could deal with the screening issue, either by cutting the deck back, or adding screening on the Gercke side.

Ms. Greenstein said the 154 sq feet in the basement, which is equivalent to the deck, is already a bedroom. It has been a bedroom for the past 10 years. She felt she was doing the right thing by adding the bedroom to the application. She doesn't want to be delayed another month, and would prefer to have an approval minus the roof deck. A 47 sq foot deck would be a very tiny deck.

Stan Given said that, in looking at Section 2.71 again, he thought one might argue that the deck is already included in the sq footage, as it is in the footprint of the building.

Willie Audet said you count the sq footage of the second floor of a building.

Jay Meyer said the definition of deck says "adjacent to the building". This isn't adjacent, it is on top.

Jon Berry said on top is adjacent.

Amanda Stearns asked if the applicant has to re-file an application for the deck, or amend their current application. She asked if the Board is treating the deck as something that is tabled and thereby qualified for the relaxed submission deadline, or if the deck would be a new application.

Jay Meyer said they would partially approve the application, and allow the deck to be tabled.

Jon Berry moved to partially approve the application, and table the portion of the application relating to the roof deck. Don Russell seconded. Motion carried 5-0.

- e. **Mary Natale Wade Morrison-** Is requesting Conditional Use under Section 6.9 to tear down and rebuild a garage and breezeway at 23 Harding Ave, Parcel U04-069, zoned "RA". **TABLED FROM JULY 27, 2010**

John McFarland said the application is to remove and replace a garage and breezeway. The current buildings are dilapidated.

Jay Meyer opened a public comment period. No public comment.

Stan Given there is only a 6 foot setback on this.

Ms. Morrison said that was correct.

Don Russell thought it looks good.

Jay Meyer asked if the residence and garage would be in the existing footprint. Mr. McFarland said they would be.

Willie Audet moved to approve the application under Section 6.9, to tear down and rebuild a garage and breezeway. Jon Berry seconded. AMENDED TO ADD approval under section 6.10. Jon Berry seconded the amendment.

Jay Meyer said under 6.9, a 10 foot minimum setback is required. Section 6.10 says an accessory structure may be rebuilt within the existing footprint. Willie Audet amended his motion to include approval under 6.10.

Motion carried 5-0.

- f. **David Cuttler-** Is requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling at 9 Edgewater Road, Parcel U09-051, zoned "RA". **TABLED FROM JULY 27, 2010**

Mr. Cuttler said they are meeting all code and sq footage requirements. This addition is for his daughter, to enable her to live on her own.

Jay Meyer opened public comment period; no public comment.

Stan Given asked about items missing from the submission. He asked if any of that additional information has been provided.

Amanda Stearns believes Mr. Cuttler added all the necessary information to the plot plan submitted at the last meeting. She mentioned the ratio calculation; the accessory cannot exceed 35% of the main dwelling, and she struggled to compare the before and after of the main house. There is one section where she couldn't tell if the resulting area was being changed.

Mr. Cuttler said the existing living area is 2,020 sq feet, the proposed accessory will be 649 sq feet, and the 35% would allow for 707 sq feet.

Amanda Stearns said the final sq footage of the existing home has to be compared.

Mr. Cuttler said the sq footage of the existing home is not changing at all.

Amanda Stearns wasn't able to tell if the area above the dining room was habitable.

Mr. Cuttler said it was not; it is roof.

Stan Given asked about drawing sheets 2 and 2.a – he wondered what is actually being added. It doesn't look like the footprint is changing at all.

Mr. Cuttler drew on a plan what is being added and showed it to Stan Given. At Mr. Given's question, Mr. Cuttler said there is no change to the sq footage of the existing dwelling; they are adding 649 sq feet for the accessory dwelling.

Jay Meyer said the distance from the side wall of the new addition to the lot line is 13 feet.

Mr. Cuttler said yes, and that is not changing. They are adding parallel to the lot line.

Jay Meyer asked if that is an existing garage.

Mr. Cuttler said it is extending in depth. The existing garage line is set back three feet, and they are adding 11 feet. He was very careful to make sure they are not infringing any further.

Jay Meyer said when you look at the front elevation there are two doors, one with a gable and then the side one, which looks like it goes into the dining room.

Mr. Cuttler said that is existing. He explained the changes proposed to that door.

Jay Meyer asked how they get into the accessory apartment.

Mr. Cuttler said there is a rear door, and there is access through the garage. He showed on the plan which is the main entrance.

Stan Given asked what the finished roof height will be.

Mr. Cuttler thought they are gaining about 2.5 feet in roof height; it is well within the limits allowed. The house is 29 feet in height.

Willie Audet moved to approve under 5.22.1 for an accessory dwelling. Stan Given seconded. Motion carried 5-0.

5. Administrative Applications

- a. Ryan Raymond (representing Joan Fitzpatrick) -** Is requesting Conditional Use under Section 6.2a for an addition and deck at 5 Oriole Drive. Parcel U44-028-G, zoned "VMU".

Ryan Raymond presented the application. This meets all setbacks and sq footage. It will be about 16 feet in height. He will follow the back wall and the roof, and the ridge will be below the two windows.

Jay Meyer didn't see anything from Ms. Fitzpatrick showing Mr. Raymond's authority to file this application. Ms. Fitzpatrick was not present at the meeting, and Amanda Stearns does not have anything to that effect in the file.

Mr. Raymond said he does have a contract, but doesn't have a signed one with him. His original contract was for a larger project; he doesn't have a signed contract for this proposal.

Jay Meyer thought they could approve this with the condition that he provides evidence of his authority to the code office.

Public comment period opened; no public comment.

Willie Audet said the drawing submitted had no scale on it.

Mr. Raymond thought the scale was 20 feet equaled 1 inch. He thought there was plenty of room on that side of the house.

Jon Berry wasn't sure the evidence of authority was an issue.

Jay Meyer said it was one of the application requirements.

Stan Given moved to approve the application under 6.2a for an addition and deck with the provision that the applicant provide proof that he has the permission of the landowner to represent her in this matter. Jon Berry seconded. Motion carried 5-0.

- b. Edward P. and E. Marie Mangenello** - Is requesting Conditional Use under Section 6.2a for an expansion at 176 Foreside Road, Parcel U14-004, zoned "RA".

Mr. Horace Horton, representing the applicants, presented the Board with a letter from the applicants authorizing his representation of them. He presented the application. The plot plan was from an earlier addition to the home. The garage identified as "proposed" has already been constructed. There is still work on the interior of the home that is being done. They are asking for the addition of 22.9' x 10.10' on the side of the home facing the preservation area. This complies with all the setbacks. On the driveway side of the house, the proposed fireplace and chimney is 5' at the base, it is between two windows. This meets all the requirements.

Public comment period opened.

Julie Otte of 158 Foreside asked to see the plans. She wondered if the fireplace was interior or outdoor.

Mr. Horton said it is interior. He answered several of her questions regarding setbacks.

Public comment period closed.

Willie Audet said this is one of the loveliest houses on Foreside road and this addition will be classy.

Jay Meyer asked if it would be above 35 feet high.

Mr. Horton said no.

Willie Audet moved to approve under section 6.2a for an expansion. Stan Given seconded. Motion carried 5-0.

- c. Stephanie Fairchild** – Is requesting Conditional Use under Section 6.2a for an expansion at 3 Kilborn Wy, Parcel U19-008, zoned "RA".

Ms. Fairchild presented her application. They want to bump out the kitchen to provide a little more space. The bump out is smaller than the footprint of the existing deck.

Public comment period opened; no public comment.

Stan Given was trying to reconcile the existing concrete shown on the aerial to the plot plan.

Ms. Fairchild said there is a concrete walkway between the deck and the garage. The deck would extend a bit and wrap around the kitchen bump out.

Stan Given checked if there was any change in the distance between the home and the neighbor's home. It didn't look like there would be.

Don Russell moved to approve the application under 6.2a for an expansion. Willie Audet seconded. Motion carried 5-0.

6. Regular Applications

a. **Hildred Sawyer Hamilton-** Is requesting a Disability Variance under Section 8.6 at 329 Middle Rd. Parcel U21-015, zoned "RBm".

Ms. Hamilton was not able to be present at the meeting. The Board decided to proceed with staff representing the applicant.

Public comment period opened; no public comment.

Willie Audet asked about the status; he wondered if this is temporary.

Amanda Stearns explained that, in order for Mrs. Hamilton to bring her husband home from the hospital, she needed to install a ramp. This is not attached to the home; it is free-standing. The code office allowed her to install this, with the understanding that if she wanted to attach it to the home she would have to apply to the Board for approval. Mrs. Hamilton and her husband are both in their late 80's and she assumed that Mrs. Hamilton would not object to a condition that the ramp be removed at the time that the occupant requiring the ramp is no longer living in the home. The picture submitted is actually of what is there; they are going to tie it to the actual steps. It was thrown up in a day, and the applicant wants to more permanently attach it to the stoop.

Stan Given asked if a building permit would have to be issued, and the ramp would have to meet ADA requirements, including handrails, etc. He thought it was a good thing they wanted to go to a more permanent structure.

Amanda Stearns clarified that a variance is required as the ramp does not meet the required front setback.

Stan Given asked if the pitch of the current ramp meets ADA for pitch.

Amanda Stearns didn't know, but they will need to apply for a permit and the building inspector will review all that to ensure that it is properly constructed. At Stan Given's question Amanda Stearns clarified that it is an option under Section 8.6; the Board can require that the ramp be removed once the resident with the disability is no longer a resident of the property.

Willie Audet was concerned this ramp will extend their footprint.

Amanda Stearns said this would have a condition that would prevent that; a typical variance runs with the land, but this one would only run with the disability.

Jay Meyer felt that condition was appropriate and that this is solely for the ramp.

Willie Audet asked if the applicant would have to record this at the Registry.

Amanda Stearns believed so, and any condition would be a part of that.

Stan Given moved to approve the application under 8.6 for a disability variance for an access ramp with the provision that the ramp be removed at such time as the person with the disability no longer lives at the property or no longer requires the ramp AMENDED TO ADD: the ramp to remain as long as the Hamiltons live there. Willie Audet seconded.

Willie Audet suggested they tie it to ownership of the property.

Stan Given thought if a family member takes over the property, they could keep it going.

Motion carried 5-0.

Other business:

Jay Meyer said Don Russell has submitted suggestions for the view issue based on Al Farris's comments, and Jay Meyer will distribute that prior to the hearing on the Traynor application.

Meeting adjourned 8:21 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary