

TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, September 28, 2010

MEMBERS PRESENT – Fred Jay Meyer (Chair), Dennis Keeler (Vice-Chair), Jim Thibodeau, Willie Audet, Don Russell (Associate)

MEMBERS ABSENT - Stan Given, Jonathan Berry (Associate)

STAFF PRESENT – Justin Brown, Deputy Code Enforcement Officer

Call to Order

The meeting was called to order at 6:35 pm.

Don Russell was appointed as a voting member.

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

- June 22, 2010 minutes: Willie Audet moved to approve the minutes as amended; Dennis Keeler seconded. Motion carried 5-0.
- July 20, 2010 minutes: these minutes were deferred to the next meeting.
- July 27, 2010 minutes: these minutes were deferred to the next meeting.
- August 24, 2010 minutes: Willie Audet moved to approve the minutes as amended; Don Russell seconded. Motion carried 5-0.

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

Applications

- 1. 40 Old Powerhouse Road, Kathleen and Zbigniew Kurlanski** – Administrative Appeal of a decision of the Code Enforcement Officer regarding parking at the Portland Yacht Club, Parcel U16-083, zoned RA/LR. - **Tabled from August 24, 2010**

Jay Meyer and Don Russell are recused from this application.

Dennis Keeler acted as chair for this application. He explained that there are only four members of the Board eligible to vote on this item, and two of them were unable to attend the meeting tonight. This matter should be tabled.

Willie Audet moved to table the application until the October 26th meeting; Jim Thibodeau seconded.

Dennis Keeler asked for comment from the public. There was no comment.

Motion carried 4-0.

2. 20 Burgess St, Traynor Family Residence LLC - Conditional Use application under Section 8.3, 6.11 & 6.2b for an expansion of the dwelling, Parcel U16-044, zoned RA and LR. - Tabled from August 2010

Dennis Keeler and Don Russell recused themselves from this application.

Mr. George Theborge, representing the Traynor family, stated that they were before the Board in June with an application for a 24 x 24 garage addition off the rear of the 1500 sq. ft. single family dwelling as well as a half story on top of that. The addressed all the criteria in the ordinance, but the neighbors brought in a host of objections to the project and the Board tabled the application. The Traynors have since compromised and scaled down their project. It is now a 7 foot extension off the back of the house, extending 4 feet towards the McGowan property, squaring off the front section and adding 285 sq. ft. to the addition. This will result in a slight reduction in the impervious surface. In the staff agenda notes Amanda Stearns pointed out a couple discrepancies in the application. Mr. Theborge passed out modified plans to the Board. There is a slight infringement on the setback at the corner of the abutter's property: it is 9.7 feet instead of the required 10 feet. They are requesting that the Board find that they are in substantial compliance on that corner, but if they have to, they can do a 4 inch jog at that corner. The existing impervious surface is 33,277 sq. feet, or 24.5%. They are proposing to take the walkway that comes from Ayres Court down to the addition and put in a product called grasscrete that allows vegetation to grow up through it. This will meet the technical requirements for non-vegetated surface coverage and reduce the total impervious surface slightly. They reviewed the legal opinion submitted by town attorney Bill Plouffe. Their position has been that, in regards to the coastal bluff regulation adopted by the Town in 2009, they could hire a qualified professional in the case of any questions regarding the location of the coastal bluff. They hired a geotechnical engineer and he determined the coastal bluff in this location is stable. In Mr. Plouffe's letter of August 18, 2010 he stated that either reading of the ordinance is defensible. There is no reason that the small expansion of the back addition will have any effect on the coastal bluff.

Mr. Richard Traynor said he and his wife live at 20 Burgess St. He owns the house with his son who lives in NJ. They have no intention of sharing living quarters with anyone else except for family visits. When they purchased the property in February of 2010 the broker told them there was a note on the assessor's card that the house could be expanded. Code Enforcement Officer Al Farris confirmed this, so long as any expansion conformed to the ordinance and the ZBA approved the application. The house needs expansion but because of resistance from abutters they have substantially reduced their planned expansion. They have eliminated all potential water view interference. The new plans have the neighbors' acceptance. The stability of the bluff need not be decided on this application. He asked the Board to please approve the application as submitted.

Public comment period opened.

Mr. Chris Green lives at 11 Ayres Court behind the Traynor residence and thanked the Traynors for the new plan. He is in full support of the plan.

Ms. Maura McGowan lives at 8 Ayres Court. They received the new plans and appreciate the efforts the Traynors made to address the concerns of the water view impacts. They support an approval by the ZBA.

Mr. Bill Gardiner currently rents the property at 27 Town Landing Road with an option to buy it. He appreciated the fact the Traynors shared with him what they intended to do. He hoped the Board will approve the application.

Public comment period closed.

Jim Thibodeau asked Mr. Thebargé who did the geo-technical study. Mr. Thebargé said it was Steve Rabaska. This report was reviewed in-depth at the July 27th meeting.

Willie Audet asked if the 3.5 inch encroachment into the setback was verified by a surveyor. Mr. Thebargé said it was surveyed and that section could be jogged over to meet the setback.

Jim Thibodeau asked if that encroachment was on the existing structure. Mr. Thebargé said yes, except for the very corner where the proposed expansion meets the main building.

Willie Audet thought that might require a variance.

Jim Thibodeau thought it depended on where that 3.5" was. If it is a roof overhang and it is *de minimis* he thought it wouldn't need a variance.

Justin Brown said he has come across this before with gutters, but those are accessory and can be removed. The edge of an eave is the edge period. He has never seen *de minimis* change. Over is over.

Mr. Thebargé said they are fine making sure it meets the 10 foot setback.

Jay Meyer said the Board has never made an exception like this.

Jim Thibodeau asked if the extension was because of the overhang. Mr. Thebargé said he wasn't sure, but they would make the adjustments.

Jay Meyer asked Mr. Thebargé to clarify where on the plan the area is.

Mr. Thebargé confirmed the location. That corner is 9.7 feet from the property line. The building angles away from the property line. They will jog it over and make sure the eave is outside the 10" setback.

Jay Meyer asked if they will meet the 30% shoreland zone expansion limit. Mr. Thebargé said they do not acknowledge that the 30% applies to the project.

Jay Meyer asked if you measured the shoreland setback, the 100 feet setback from the top of the bank, would the expansion within this setback meet the 30% limit.

Mr. Thebargé said if you include the basement it would have questions.

Jay Meyer asked if this was because of an unfinished portion of the basement.

Mr. Thebargé said it is a question of the building being so small; it is hard to put a 30% expansion if the entire building is subject to this limitation. They do not feel that it is.

Jay Meyer asked the expansion will include an expansion of the basement as well. Mr. Thebargé said yes. It will be a full basement under the expansion.

Jay Meyer asked if the sq. footage now is 1,863 sq. feet.

Mr. Thebarge said that is the impervious surface which includes the patio and walkway. The building is 1,509 sq. ft. There is another 976 sq. feet in the existing basement. This goes back to the coastal bluff issue, which was only raised by the neighbors to try to affect the view impact of the second story. Our position has been the coastal bluff regulation doesn't apply to this property. In keeping with the ordinance and the legislative intent of the provision we had a geo-technical engineer declare that bluff to be stable; we do not have to address this issue at all. Mr. Plouffe has indicated that this is a legitimate position to take.

Jay Meyer said the coastal map shows it as being unstable.

Mr. Thebarge said the coastal map is an indicator. It is not intended to be site specific. A property owner with a qualified consultant can go out and make a determination if the map is accurate or not. In their view they have demonstrated that it is not accurate in this location. Under Section 7.25e a property owner has the right to do that.

Jay Meyer asked if he is asking the Board to decide that it is not accurate. Mr. Thebarge said no; they are asking them to determine that it is irrelevant to the application.

Jay Meyer thought it is relevant; Mr. Plouffe was clear that, if it was an unstable bluff, you would have to measure from the top of the bank.

Mr. Thebarge said that is correct if it is an unstable bluff, and they demonstrated it is not.

Jay Meyer thought they couldn't take two positions; they need the Board to decide if the map is wrong.

Mr. Thebarge said they would prefer that the Board indicate that this is not pertinent to the application. If they insist that it is pertinent we will have to address this.

Willie Audet asked Justin Brown if he had made a determination. Justin Brown said he had not; he just reviewed the material before the meeting.

Willie Audet asked if Justin Brown is the permitting official. Justin Brown said yes, he and Amanda Stearns, the Community Development Director.

Mr. Thebarge said Mr. Plouffe's position was that the CEO was the permitting authority. When Mr. Chris Vaniotis was before the Board in June he indicated that, since the application has to come before the Board for a Conditional Use Permit, the Board is the permitting authority. Mr. Plouffe said, and Mr. Thebarge agreed, that they could send it to the CEO for an official opinion which could then be appealed.

Jay Meyer asked Justin Brown if the CEO has made an official determination. Justin Brown said not that he knew.

Jim Thibodeau asked if they included basements as square footage. Justin Brown said yes, if it qualifies as a basement with 6.5 feet of height room.

Jim Thibodeau asked if Mr. Thebarge had any case history on this and Mr. Thebarge said the State has revised the guidelines for expansion within the 100 foot setback several times. The issue is what is counted as a story or a basement. The ordinance in Falmouth says if it is a cellar it doesn't count as floor space, and so it doesn't count in the expansion. That is defined as a

ceiling height of 6.5 feet or less. They are proposing a full basement. Their position is that the structure should not be subjected to the 30% limitation because it is not on an unstable bluff.

Jim Thibodeau said that, in respect to whether it is a basement of cellar with respect to the issue of the stability of the coastal bluff, it is irrelevant; there's no connection between the size and depth of the basement and the coastal bluff. He doesn't see a formal connection. He has read Mr. Plouffe's letter and felt they have latitude without making a determination, unless they have peer review. It is not up to the Board to decide whether that report is accurate or not. He was comfortable to rely on it and make a decision.

Jay Meyer wanted to address the infringement on the 10 foot setback. He suggested a condition to that effect.

Jim Thibodeau moved to approve the application under sections 8.3, 6.11 and 6.2b with the condition that the structure not be more non-conforming with respect to the setback, as represented by the applicant.

Willie Audet asked for confirmation that the addition can not exceed the 10 foot setback. Jim Thibodeau said yes.

Willie Audet asked if Justin Brown will be inspecting this. Justin Brown said yes.

Willie Audet seconded the motion.

Jay Meyer clarified the motion that the addition must meet 6.2 b 4 and meet the 10 foot setback.

Motion carried 3-0.

3. 141 Gray Road, Jeff Mason - Section 6.2.a Conditional Use application for an expansion of the dwelling, Parcel U42-010 zoned VMU, RP and LR. - **Tabled from August 2010**

Mrs. Claudette Mason presented the plans to rebuild the porch as it is, enclose the steps and maintain the existing building footprint. The proposed deck meets the 15 foot side setback, and doesn't go any closer to the lot lines than the home does already.

Public comment period opened; no public comment.

Willie Audet moved to approve the application. Don Russell seconded. Motion carried 5-0.

4. 2 Laurel Lane, Ms. Betsey Greenstein- Section 6.9 and 6.11 Conditional Use application to tear down and rebuild an addition to the dwelling, Parcel U09-034, zoned RA and LR. **Tabled from August 2010**

Jay Meyer said the Board has an application and a request for reconsideration. He asked the applicant to present first.

Mr. Buell Heminway, an architect representing Ms. Greenstein, prepared the application and submitted the revision on Sept 7. The request for reconsideration was submitted by the neighbors at 4 Laurel Lane after that. He met with Amanda Stearns and Justin Brown on Sept 22. He submitted a memo to Ms. Stearns on the 23rd and he distributed copies to the Board. He presented the revised plans dated the 7th. They have revised the second floor deck to address the neighbors'

concerns about privacy. Ms. Greenstein met with the neighbors yesterday and addressed their concerns and they agreed that the deck will not protrude any further than the rebuilt turret on the proposed house. The deck has been relocated to the easterly end of the house, over the 2000 addition. He discussed the calculations for floor area and volume; they are under the allowed expansion limits. He discussed the reconsideration request. In the meeting with Ms. Stearns, they discussed the definition of a basement. The existing basement in the original house pre-2000 does qualify as a basement and can therefore be counted as part of the 30% expansion. They also determined that the basement in the 2000 addition, with headroom of 6' 9", could be turned into a cellar by reducing the headroom to 6' 6". Mr. Heminway did some measurements and confirmed that the lot is non-conforming due to coverage. He erred in the original calculations; he based the lot coverage on buildings and didn't calculate impervious surface. It exceeds the 1800 sq. ft. and the 20% coverage. They would like to give back some of the coverage they take in impervious surface. They are not expanding beyond the footprint of the building, except for the entry porch. The last issue was the dimension between adjunct structures. Owen Haskell measured the distance between 2 & 4 Laurel Lane. His report was that the closest point between the two buildings was 25.2 feet. They may do a metes and bounds survey that would calculate the current impervious surface as of 2010. They would then re-vegetate and swap impervious surface for impervious surface.

Ms. Greenstein stated that when she left last month she thought the structure was approved and they had to make some changes to accommodate the deck. She felt they had done this with the roof top deck. The house has a number of gardens, walkways and wooden decks. All around the house are gardens and she would like to maintain these gardens, but to go around the house you need walkways. There are two wooden decks between her house and the Gerkes' home and she would be willing to remove both of them. She would like to leave the stone and brick areas until after the renovations are done.

David Laurie, an attorney representing Carl Gerke and Catherine Field the abutters at 4 Laurel Lane, explained that reconsideration allows the Board to undo what was approved previously. He says reconsideration is necessary in order for the Board to incorporate the changes recommended by the applicant. The original application contained factual errors. He said the presentation made in 2000 showed that the 30% expansion limit was maxed out at that time. Mr. Heminway presented that the headroom in the 2000 basement additions was very minimal at 6' 9". The plan that was approved by the Board in 2000, and presumably built, showed 7' 8" of headroom. This is supposed to be a one-time, lifetime expansion. They are proposing to lower the ceiling in order to evade the ordinance. He is not sure if they will reconstruct the whole addition or put some boards across the top to make the ceiling lower. This is not what the ordinance contemplates as being permitted, that by rendering the space unusable this allows them to expand. That space needs to be counted. They didn't count it at all in 2000. Now they think they've figured a way to make it not count if they lower the ceiling below the definition of cellar. You can't render habitable space uninhabitable so you can justify expanding more in a different direction. It subverts the whole purpose of the ordinance. There are privacy issues regarding the area between the two houses. The houses are close together. The abutters are concerned about non-vegetated surfaces. He thought the Board shouldn't approve an application that is already in violation of the non-vegetated surface ratio until at least it is first cured. If they choose to do so, they should

put conditions on it. The changes proposed are a step in the right direction but they are not sufficient under the ordinance to bring it into compliance.

Jay Meyer would like to hear the evidence. Mr. Laurie thought they had to decide the issue of reconsideration before they can do that.

Dennis Keeler was not sure he can vote on the reconsideration because he wasn't here in August. He would be more comfortable if the Board decided reconsideration first, and then he could participate in hearing the evidence. Jim Thibodeau was absent from the last meeting as well, and he agreed.

Mr. Laurie said that any member of the Board can vote on reconsideration.

Jay Meyer opened a public comment period on the reconsideration issue only. Public comment closed.

Mr. Heminway stated that at the August meeting it was discussed that the basement area was never counted in the 2000 application. Mr. Farris allowed them to take the basement area and use it. This area is a basement; it is in conformance with the 2/3 coverage rule and the head room rule. The head room is 6'11³/₄". The permit application in 2000 may have shown a 7'8" ft. ceiling height but the present ceiling height is 6'9" from the slab to the bottom of the floor joists. In the original application they were going to put habitable space under that 2000 addition but in the revised plans they will keep this as storage space; they found a way to get an extra bedroom in the original house. The ordinance defines a cellar as less than 6'6". In the International Residential Code (IRC), it defines anything under 7" as uninhabitable. The present basement is 6'9", lower with fire separation. They will be pouring 2" of lightweight concrete to level up the floor and install heating tubes. Part of this will end up as a mechanical room, which will mandate a 5/8" fire code ceiling in there. This will bring it below 6'6".

Jay Meyer asked if what he is proposing in the basement now will be less than 6'6". Mr. Hemingway said yes.

Jay Meyer asked if this is the whole area marked as "storage" on the new plan. Mr. Hemingway said yes. Part of it was marked as a bedroom on the original plan.

Jim Thibodeau asked what is there for floor joists. Mr. Hemingway said in the 2000 addition there are 2x10's; the field measurement was 6'9".

Mr. Laurie didn't think the ordinance writers ever intended that the applicant could come back and render habitable space inhabitable; the space is still going to be there and it may be a problem down the road policing how the space is used. He felt the height should be rounded up; if it is 6'6" it should be rounded to 7 feet. Assuming it is approved it will have to be inspected by the CEO and it will have to be enforced that it can not be turned into a bedroom. You can never know what it is used for after Ms. Greenstein is gone.

Ms. Greenstein said in August they were asking for more storage, so that concept is not new. There is no garage and there is no attic. They need storage in the basement.

Willie Audet moved to reconsider the application as requested by the abutter; Don Russell seconded the motion. Motion carried 3-0 (Keeler, Thibodeau abstained).

Public comment period opened.

George Theborge, representing Carl Gerke and Katherine Field, focused on the Sept. 23 letter from Mr. Heminway. They are questioning the interpretation that once you do an expansion that clearly uses up the 30% allowed you can come in and declassify some of that expansion and then expand again. He felt this is a fundamental issue for the Board to review. Attorney Bill Plouffe has given the Board some feedback on this, though he hasn't seen the actual opinion, just the agenda notes. He felt the Board should discuss this. The second issue is the requirement of section 7.25g that all properties within the shoreland zone, which is 250 feet from the high water mark, are limited to 20% coverage of that lot by non-vegetated surfaces. The original application had no calculation of this. Ms. Stearns' review and comments indicated that the percentage, based on the assumed lot area, only allowed 1,830 sq. ft. of non-vegetated surfaces. The applicant's representative brought back a new submission that showed the footprint of the house and shed and represented it was around 1,300 sq. feet. In addition to the house and shed there is a driveway, which he estimated at approximately 900 sq. ft. of non-vegetated surface. There are also ground decks and brick patios down the side yard. The applicant should have brought in precise calculations showing they are in compliance with ordinance. To date they have not done this. The applicant will ask the Board to make it a condition of approval. Mr. Theborge didn't feel the Board should do this and that the Board really needed to review this under the criteria of the ordinance. He is asking for the calculation of the lot coverage. A substantial portion of the non-vegetated surface was added by the prior owner. Mr. Theborge stated this is also a privacy issue; there is not a lot of space between the two houses. He asked them to review the criteria under section 8.7a. Allowing activity between the two buildings doesn't meet this section of the ordinance. The roof deck would be further infringement of the Gerkes' privacy. He distributed a 3D rendering he did of the proposed construction. The two decks will be looking at each other and are less than 40 feet apart. In an attempt to help his clients and the applicant he did a rendering of a roof deck on the northeast corner of the top of the existing sun porch. Mr. Theborge said the applicant has been talking with his clients trying to reach an agreement.

Don Russell asked if they reached an agreement regarding the turret. Mr. Theborge said he thought progress has been made, in that relocating the roof deck might be mutual acceptable.

Don Russell heard Ms. Greenstein say she would take up the pavers. Mr. Theborge had not heard this but would be satisfied with a condition of approval to that effect.

Don Russell thought he heard that, even if it was an after the fact.

Mr. Theborge said it was a concern with enforceability and compliance. He thought the Board needs to see all the information, including a clear calculation or number, and then make a decision.

Dennis Keeler wanted to know what is being done with the current proposal, other than the deck, that violates 8.7a.

Mr. Theborge said the improvements by the prior owner exceeded the non-vegetated coverage. It created a super deck between the two properties.

Dennis Keeler asked if he thought there is a land use violation.

Mr. Theborge said partly, but the current applicant is proposing reconstruction of the entire building and redevelopment of this entire site. His clients are concerned that what is there now will become even more as part of this approval being granted, and they would like the Board to review this and have it buffered or screened under section 7.25g and under 8.7a. He clarified that the concern is that it was there when the Board reviewed it and therefore it can be improved, maintained and expanded and nothing can be done about it because the Board reviewed it, accepted that it was there and it is now there for good. He cited the case of *Grace Baptist Church vs. the City of Portland* as an example.

Dennis Keeler clarified that, if the Board allows it to go forward without sanctioning existing land use that they will continue the violation and possibly expand it. Mr. Theborge said yes, that is the concern.

Jay Meyer asked what special buffering the Gerkes' feel needs to be in place.

Mr. Theborge said that will depend on what is there now; there are no measurements of what's there or what is intended to be there after this application is approved. We can't answer what we think is necessary to screen it. If all the impervious surface goes away the need for screening is minimal. If it all stays and is replaced, that area will become active and screening would be needed.

Jay Meyer clarified that the Gerkes' view on the buffering is contingent on what is in the space between the buildings. Mr. Theborge said yes, and on what is proposed.

Jay Meyer asked if was any disagreement about the measurements between the buildings of 25'7". Mr. Theborge said no, there is no disagreement about that number.

Jay Meyer asked if they felt it would be appropriate screening or fencing if the current area stayed the same between the buildings.

Mr. Theborge said they would ask the Board to get more detail from the applicant to review this. They have not seen a site plan that accurately shows what is on the property.

Jay Meyer asked if it is vegetated between the buildings; it was unclear from the aerial photo. Mr. Theborge reviewed the photos with Jay Meyer.

Jay Meyer asked, based on the current proposal page 6, if that is the same roof deck. Mr. Theborge said yes.

Willie Audet said the top right hand sketch seems to be acceptable to everybody. Mr. Theborge said it is close.

Mr. Laurie stated he was the attorney who lost the Grace Baptist Church case. In that case, the site plan had areas marked "woods" and there were no conditions saying they had to be retained as woods.

Mr. Carl Gerke, the abutter, said the threshold issue is whether they can create area for the roof deck by decreasing the height of the ceiling. They explored the possibility of relocating the roof deck with the applicant. The other issue is the use of the space between the houses. All of the non-vegetated space between the houses was created since the 2000 renovations took place. Apparently it was all done in violation of the Shoreland Zoning ordinance. The impact of this

was to create additional outdoor living space within feet of his house, degrading his property. They would like, if the application is allowed to go forward, a condition that the roof deck be moved, if it is allowed at all, and that all the non-vegetated surfaces within 20' of the property line be removed and not replaced.

Dennis Keeler asked Mr. Gerke if he was satisfied with the location of the roof deck on the most recent drawings. Mr. Gerke said yes.

Don Russell asked if the applicant meant what she said about removal of the impervious surfaces, excluding the path.

Ms. Greenstein said she is comfortable removing the 2 wooden decks and the shed. She would like to have a walkway along the side of the house. Also, it is necessary to excavate around the house for a perimeter drain, which will require crushed rock within 20 feet of the abutters' property. She needs to be able to walk along the side of the house, but it is not her intention to create any outdoor living space. There is a fence and some arbor vitae.

Jim Thibodeau clarified that crushed rock is a pervious surface. He felt if she had some stepping stones on the grass, he wouldn't count that as impervious surface. He asked if she was ok, besides having the crushed stone drainage around the perimeter, with removing all other impervious surfaces, decks, patios, and impervious walkways. Ms. Greenstein said yes.

Jim Thibodeau asked Mr. Gerke if they would be willing to accept a simple walkway so that Ms. Greenstein can access her basement.

Mr. Gerke observed that the ordinance says "non-vegetated" and not impervious surface. He said their main concern is to limit the use as outdoor living space and to seek compliance with the non-vegetated requirements of the ordinance. He felt that, as long as the walkway is as close to her house as possible, it protects their privacy.

Jim Thibodeau asked if they would prefer to have a landscape plan that they could review. Mr. Gerke said yes.

Don Russell asked if they would oppose flagstone as a walkway.

Mr. Gerke said flagstone would be preferred by everyone as opposed to concrete. It depends on the location, how broad it is, etc. If there was a landscape plan it might settle this. A single file flagstone walkway to access the basement instead of a 4' wide walkway would not be an issue.

Willie Audet said he would feel much more comfortable if he knew the total calculations. And the Board would know what the coverage should be.

Jay Meyer stated the total impervious coverage now exceeds 20%.

Mr. Gerke pointed out there are two issues: the total impervious surface and the ordinance providing the ability for the Board to protect his privacy and peaceful enjoyment.

Dennis Keeler observed that there are 3 things in front of the Board: the basement and the deck; the placement of the deck; and what the impervious area is. He asked Justin Brown what gets counted as space against that 30% expansion.

Justin Brown said that habitable space is defined as livable space. A basement is calculated in that 30%. A cellar is not.

Dennis Keeler wondered if this would have been permitted if the applicant came to the Board in 2000 with an expansion that included the deck, a basement as currently described and the 6' storage area. Mr. Brown said yes.

Dennis Keeler asked if they would not now have an expansion issue, if that storage area had been built in 2000 under 6'5". Justin Brown said he believed so.

Dennis Keeler stated the only question now is whether it can be in excess of 6'5" in 2000 and then brought down to make it uninhabitable, so that it would no longer be counted and the space could be used someplace else. Justin Brown said that was correct.

Jim Thibodeau asked Justin Brown what the required setback is for the building from the upland edge of the water body. Justin Brown said he believed it was 250'.

Jim Thibodeau said the plan shows 100'; he wanted to make sure they are looking at the correct issue. The sections of the building that are within that setback are what are subject to the 30% expansion.

Mr. Hemingway said it was discussed at the last meeting. There are 3 different water marks on the mortgage plan. The discussion he had with Ms. Stearns, and the email she had with DEP, is that it is all within the shoreland and subject to the 20% coverage.

Mr. Laurie said there is some confusion between uninhabitable space and the definition of cellar. They are not proposing to make it permanently uninhabitable; they are just taking it out of the definition of cellar. The question is how the Town will be assured that any future owner of the property won't use it as habitual space. It is habitable even if it is labeled storage. If a condition is put on it that it be used as storage, how can the Town then enforce that condition? The ordinance was supposed to establish a 30% limit, and not to allow an applicant to reclassify the space later. The headroom of this was originally supposed to be 7'8" and turned out quite different.

Public comment closed.

Dennis Keeler moved, for purposes of discussion, to approve the application under 6.9 and 6.11 to tear down and rebuild. The application as it stands includes the relocation of the roof deck, and the September 23 letter and the revised plan dated September 28. Jim Thibodeau seconded.

Dennis Keeler said the idea of changing the basement to a cellar is unique, though he was not sure that it can't be done. He didn't feel that, if they did it a certain way in 2000, it ties their hands from ever doing something else. Had they proposed the roof deck and below ground storage space in 2000 as a cellar there would have been no problem. He thought the Board can impose a condition that the space be used as storage, and while enforcement would be problematic he didn't think that difficulty with enforcement is a reason to turn something down. Enforcement is always an issue. He felt the neighbors have gotten the Board off the hook on the issue of the deck location, where what has been proposed is acceptable to the neighbors. He felt the 20% rule on the non-vegetated surfaces isn't in front of the Board. He is not sure what it has to do with this application. If it is more than 20% it is a violation and the landowner needs to

take care of it. It is not being changed as part of this application. They are not putting in more decks or enlarging the driveway. If it were in front of the Board, he was not sure the Board should be negotiating what should come out and what should stay. It is an enforcement issue. He was inclined to reconfigure the basement back and apply a condition that it remain storage; he thought the proposal for the roof deck has been dealt with and the neighbors are comfortable with it, and that is all that is in front of the Board.

Jay Meyer felt the vegetation and impervious surface is before the Board under 8.3a. The applicant has agreed that the total footprint for all non-vegetated surfaces presently exceeds 20%.

Dennis Keeler thought that section applies only to the current application, and not existing conditions of the property. To him, the existing condition is a CEO issue.

Willie Audet thought they should impose a condition that the applicant must comply with the 20% limit.

Jim Thibodeau didn't feel they could approve this application without a landscape plan, so that the Board and the abutters could review it and make sure the applicant complies.

Don Russell agreed that they needed to comply, but didn't feel they should micromanage where the 20% is located.

Willie Audet felt it was for the CEO to ensure that it conforms, not for the Board. He felt they could make it a condition on the certificate of occupancy.

Dennis Keeler was concerned that it would then become part of the Board's discussion. He wasn't averse to imposing a condition, but he didn't want to say that addressing that issue is part of the application.

Jay Meyer felt they could clearly impose conditions on screening and buffering, which would require a landscape plan. Regarding the cellar issue, this space was created in 2000, after the adoption of 6.11.a. While it was unique, he felt they could do what they have proposed in this regard. He would like to see a landscape plan.

Willie Audet felt the applicant has already testified that she will bring her lot into conformance with the 20% non-vegetated limit and it should be up to her how she comes into conformance. He felt the condition should be that the applicant show proof that she does not exceed the 20% limit.

The Board discussed the issue of a landscape plan.

Dennis Keeler amended the motion to include a condition that the headroom in the area marked "space A" in the revised plan be reduced to meet the definition of a cellar and that it be limited to storage, and that the applicant engage a qualified professional to evaluate the lot coverage, that the lot coverage shall not exceed the 20% non-vegetated surface limit as stated in the ordinance, and anything above the 20% shall be removed from the area between the applicant's house and the Gerkes' residence.

Ms. Greenstein asked for clarification on the motion.

Jay Meyer said the motion was for the whole property to meet the 20%. Ms. Greenstein felt some of the improvements were grandfathered.

Jim Thibodeau felt what was relevant was the area between the two houses, and that was why he wanted the landscaping plan. The plan would identify those items that were grandfathered.

Justin Brown said that, in a typical situation, the proof is upon the applicant to show what was done when. He would generally assume something was installed after the adoption of the ordinance unless proof was provided otherwise.

Mr. Thebarga thought the driveway, outdoor fire pit and foundation alone exceed the 20%. He felt if they limited it to removal of the non-vegetated between the two properties it would be sufficient.

Dennis Keeler asked why she should have to remove anything if it was grandfathered.

Mr. Thebarga said that, since 2000, substantial new impervious surface has been added.

Willie Audet observed that the Gerkes' bought their property in 1993 and testified that the decks, etc. were added since 2000. He felt this was their chance to correct that violation. He felt that the 20% lot coverage was one of the reasons they voted to reconsider the application.

The consensus of the Board was that any non-vegetated surface between the two properties should be removed, minus a walkway to the basement.

Dennis Keeler amended his motion to add a condition that the non-vegetated surface between the two properties be removed, except for a reasonable walkway to allow access to the storage area and a pervious stone drip edge for drainage around the foundation. Don Russell seconded.

Motion carried 5-0.

5. 75 Applegate Lane, Daniel & Nancy Thurber – Section 6.2.a Conditional Use application for a dormer and living space, Parcel U59-010-031, zoned RA.

Nancy Thurber presented her application. They had an approval from the Board in July 2007 to add a family room and a dormer to the condo. The condo has been vacant since then, because they could not sell their primary residence. The sale of that property went through in June of this year, but the approval for the improvements to the condo has expired. They are now living in the unit. They went back to the condo association, and they have reissued their approval of the plan. The current plan has four more feet added to the family room than the previous plan did.

Public comment period opened; no public comment.

Dennis Keeler asked what kind of unit they have. Ms. Thurber said they have an end unit.

Don Russell moved to approve the application. Dennis Keeler seconded. Motion carried 5-0.

6. 19 Providence Avenue, Edward Cramp – Section 6.2.b Conditional Use application for a porch addition to the dwelling, Parcel U04-061, zoned RA.

Edward Cramp presented his application. He wants to add a farmer's porch to the front of the house, and then wrap it around the side of the house to the kitchen door. He felt he was within

the lot coverage limits. He has spoken with the neighbors and everyone he has spoken to was in favor of the plan.

Public comment period opened.

Jay Meyer indicated that the Board had received written comments from Rich Bayer, an abutter, who was in favor of the application.

Public comment closed.

Willie Audet asked if the porch would be within 10 feet of the property line, or 20 feet from any adjoining properties.

Mr. Crump said this is a very small lot; the existing small porch at the kitchen door impedes on the setback – it is 6 feet from the property line and has been there since the home was built. He is not expanding any closer to that line, but is keeping in line with what is already there.

Willie Audet thought it looked good without the wrap-around. Mr. Crump can square off in the front.

Mr. Crump agreed to modify his plan to include only the farmer's porch in the front, and leave what is there on the side. He is going to extend from the roof line with new rafters. He asked if there were any grandfathered setback limits, since the house was built in 1952.

Jay Meyer said he can square off, provided it is not within 10 feet of the property line, 20 feet from an adjoining structure, or closer to the lot line than the existing structure.

Mr. Crump said that the bottom of the stairs is 19.5 feet from the lot line.

Jay Meyer explained that the 20 feet is from an adjoining building. He can't go any closer to the lot line than the bottom step in the front.

Mr. Crump asked if he can place a granite slab as a step, if he extends the porch to the limit of the existing bottom step.

Justin Brown said they do not enforce natural materials except in shoreland zones, so yes he can.

Don Russell moved to approve the application except for the side extension of the porch. Dennis Keeler seconded. Motion carried 5-0.

7. 93 Falmouth Road, Rob and Jessi Woodman - Section 6.2.a Conditional Use application for a second story addition on the dwelling, Parcel U28-007, zoned RB.

Rob Woodman presented his application. He wants to add a second story addition to his cape house. He has worked with Justin Brown since the application was submitted and they discovered that the side yard is in conformance. The only non-conformance on the lot is that they have only 100 feet of road frontage. The septic is designed for 4 bedrooms. They converted one of the existing bedrooms into a dining room last year. After this project is completed, they will once again have 4 bedrooms. He said the height of the finished home will be 28 feet. He has spoken with the abutters, and they were comfortable with the plan.

Public comment period opened; no public comment.

Jim Thibodeau asked about an existing conditions plan. He wondered about the location of the two existing bedrooms.

Mr. Woodman said the bedrooms are currently upstairs. He indicated their location on the plan.

Jim Thibodeau asked if those two bedrooms would be eliminated.

Mr. Woodman said yes, those bedrooms would be eliminated and replaced with three new ones, resulting in a total of four bedrooms. He wasn't planning to put eaves or gutters on the home. Putting on an eave would increase the footprint.

Jim Thibodeau asked if adding the eave would be a problem. Mr. Woodman didn't think so; he is only non-conforming due to frontage.

Justin Brown thought he had enough room for an eave. He clarified that the plan is inaccurate with respect to the property line. They pulled the deed for the adjoining property and confirmed the location of the lot line.

Jay Meyer encouraged him to confirm that he is no closer than 10 feet to the line. Mr. Woodman explained the work they did to establish the correct location of the lot line.

Dennis Keeler asked Justin Brown if he was comfortable with the lot line.

Justin Brown said, given the information they have now, he was.

Dennis Keeler moved to approve the application; Don Russell seconded. Motion carried 5-0.

8. 87 Leighton Road, Edith White – Section 5.21 Conditional Use Permit for the establishment of a home occupation, Parcel U45-045, zoned RB.

Edith White presented her application. She would like to run a massage therapy business out of her home two days a week.

Jim Thibodeau disclosed that he owns property on Leighton Road, but does not know Ms. White at all and felt there was no conflict with his participation on this item.

Public comment period opened; no public comment.

Jim Thibodeau asked if this is a permitted, in-home occupation in that zone.

Dennis Keeler reviewed the provisions of section 5.21. He asked if there is a section of the home that will be turned into a location for the business.

Ms. White said yes; she explained the room and the planned design of the home. She is the only person who will be involved. There will be no signage, and she isn't planning any advertising. There is a two car garage, with space for two cars in front of the garage, and room for two more cars singly behind those two. Theoretically she has room for 6 cars, but will only have one person at a time, and so only one car will be there beside her own.

Dennis Keeler didn't think it was more than 20%. Ms. White said it was not; it will utilize 12.25% of the home.

Jim Thibodeau felt this was close to hair cutting in terms of business classification.

The Board discussed the classification of the business.

Willie Audet moved to approve the application; Don Russell seconded.

Dennis Keeler was concerned about the ordinance provision “customarily carried on in a dwelling unit”. Willie Audet agreed with Jim Thibodeau that this was similar to cutting hair.

Motion carried 5-0.

Meeting adjourned.

Respectfully submitted,

Melissa Tryon
Recording Secretary