

TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, October 26, 2010

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

MEMBERS ABSENT -

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

1. Call to Order

The meeting was called to order at 6:31 pm.

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

No minutes were approved.

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

Jay Meyer had concerns about the VEI and Kombakis applications, but for the purposes of tonight the applications were complete.

4. Applications

- a. 2 Inverness Road, Stephen J. Willis** – Section 8.2.1 appeal for a Mislocated Single Family Dwelling, Parcel U65-053, zoned FF.

Bob Danielson, an attorney from Portland representing Mr. Willis, explained that this is a mislocated building appeal. This is a single family dwelling in the Farm and Forest district. The Willis' acquired the property in 1988 and built the house in 1989. The rear setback for this lot is 40 feet. The property has been for sale, and now that it is under contract the mortgage loan inspection, verified by a survey, discovered that the house is at 37 feet back from the rear line. They have since removed a deck that was also violating the setback. They asked the contractor how this happened; no one seems to be able to answer that satisfactorily. The backyard is sufficiently wooded; he would consider the violation of the setback *de minimis*. This was not done for any advantage to the property – there was nothing to be gained by doing this. He didn't believe there was any adverse impact to any abutting properties; he didn't think anyone would notice it even if it were out in the open. It wouldn't benefit the public health, safety or welfare to make Mr. Willis make changes to his house. There are no alternatives short of taking the house down. There is only one abutter, whose home is also for sale, and there is nothing they can do to modify the construction. They hope the Board finds that they made a reasonable accommodation and that this is an honest mistake.

Public comment period opened; no public comment.

Dennis Keeler asked about something on the plan on the back of the house; Mr. Danielson said that was the deck, which has been removed. Dennis Keeler asked how big the deck was; Mr. Danielson said it was 4-5 feet, with a hot tub on it.

Dennis Keeler asked if the only encroachment is the corner itself. Mr. Danielson said yes, it is the corner closest to the driveway.

Dennis Keeler asked if it is the building itself that encroaches; Mr. Danielson said yes, ground to roof.

Dennis Keeler asked if they tried to pursue acquiring land from a neighbor. Mr. Danielson said they did not approach the neighbor. They felt since the abutter's house is also for sale it would be very difficult. Also, the abutter's home is part of another subdivision. The plan that was approved for Mr. Willis's lot was the Falmouth Country Club Subdivision. They would have to go and amend the other subdivision with the Planning Board in order to add property to the Willis lot.

Dennis Keeler asked about the process for a consent agreement. He thought they go to the Council as a separate matter.

Amanda Stearns said that if the applicants get approval from the Zoning Board they have the opportunity to go to the Council for a consent agreement. The Council will also review and make a determination on penalties.

Willie Audet asked who the original builder was. Mr. Willis said it was David Reardon.

Willie Audet asked if Mr. Willis was responsible for placing the home. Mr. Willis said no, he hired a builder and the builder got a surveyor and the building permits. No one can find the certificate of occupancy, not the Town, the Willis', nor the builder.

Willie Audet asked if Mr. Willis was on-site when the foundation was poured.

Mr. Willis said he was there everyday, but he relied on his contractor to do everything. No one would have done this intentionally.

Jon Berry asked if the back deck was built at the same time.

Mr. Willis said yes, but it wasn't on the plans. He thought they were originally planning on having it elsewhere and it was relocated to the back for more privacy. It is now gone.

Jay Meyer thought if a surveyor was hired, Mr. Reardon would have hired him. Mr. Willis said yes, but he didn't think Mr. Reardon had one.

Jay Meyer asked about an existing survey plan.

Mr. Danielson said the subdivision plan includes a boundary survey of the lot; they don't have anything more than that.

Willie Audet asked if the builder provided him with as-builts after the home was built.

Mr. Willis didn't believe so; he reviewed the plans he had to see if that deck was on them and it wasn't.

Dennis Keeler moved to grant the appeal for a mislocated single family dwelling. Willie Audet seconded. Motion carried 5-0.

b. 40 Old Powerhouse Road (Portland Yacht Club) appeal by Kathleen and Zbigniew Kurlanski – Section 8.2, 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 September 28, 2010

Jay Meyer, Don Russell and Jim Thibodeau previously recused themselves from this application. Dennis Keeler served as chair in Jay Meyer's absence.

Dennis Keeler explained that the public hearing on this matter is closed; they have had the Board discussion and at the last meeting at which this was discussed they conducted a straw poll and requested Attorney Michael Pearce to draft findings of fact and conclusions of law. The Board received revised draft versions of the minutes for the previous hearings of the application only this evening. He asked if the Board is comfortable proceeding with the Findings of Fact/Conclusions of Law based on the information they have, minus approved minutes.

The Board was comfortable proceeding.

Dennis Keeler said they also have a letter from David Lourie, dated August 3, 2010.

Jon Berry thought the August 3 letter was submitted after the record was closed. He thought it was important in order to be precise to narrow down what they have considered, i.e. what is reviewable and what is not.

Dennis Keeler asked if that was the only document submitted after July 27.

Amanda Stearns said it was, other than the draft Findings of Fact themselves.

Jon Berry wanted it clear that the Board only considered items submitted up to the date of each vote taken by the Board, and not those items submitted after.

Dennis Keeler said the Findings of Fact summarized the history of the appeal, which was first filed in August 2009. He asked if everyone had a chance to review the document.

Dennis Keeler asked about a piece that was inadvertently left out of the Findings of Fact.

Mr. Pearce said he didn't have it with him, but he had the draft Findings of Fact that would have included it. He also had a printout of just the Findings of Fact 1-20 so the Board can vote on them one by one, which was his recommendation.

The Board addressed each finding separately.

The Board voted 4-0 to adopt Finding 1: *The Kurlanskis purchased the Kurlanski Property from the Estate of Albertina Bryant in 1983. It is located at 20 Old Powerhouse Road, which is also the access road from Foreside Road, aka Route 88, to the PYC. Old Powerhouse Road is a private right of way for the benefit of the PYC and residences on that road.*

The Board voted 4-0 to adopt Finding 2: *PYC is a private club located at the end of Old Powerhouse Road on the oceanfront.*

The Board voted 4-0 to adopt Finding 3: *PYC purchased Lot 2 from the Estate of Albertina Bryant in 1983 subject to a view easement and other restrictions benefiting the Kurlanski Property.*

The Board voted 4-0 to adopt Finding 4: *The Kurlanski Property abuts Lot 2 and is on or near the crest of a hill up gradient from Lot 2.*

The Board voted 4-0 to adopt Finding 5: *Lot 2 consists of a field with a pond, bushes and trees along the border. It is not paved. The Kurlanski Property overlooks Lot 2. It is depicted on the Site Plan admitted into evidence at the public hearing.*

The Board voted 4-0 to adopt Finding 6: *The PYC is primarily a seasonal club that hosts regattas, races, meetings and social events of various types for the pleasure and benefit of its members and their guests. It has been located at its site in Falmouth for many decades.*

The Board voted 4-0 to adopt Finding 7: *PYC maintains and at all time relevant to this appeal has maintained a paved parking area which is located on the PYC Waterfront Lot. Lot 2 is unpaved. For many years, especially after the loss of the Canada Dry and 12 Old Powerhouse Road parking areas, the paved parking lot has occasionally been inadequate to meet the parking needs of PYC's members and guests during large or special events. As a result, PYC has for many years occasionally utilized Lot 2 for additional parking. The record does not reflect that dates that the Canada Dry and 12 Old Powerhouse lots became unavailable.*

The Board voted 4-0 to adopt Finding 8: *Prior to both 1965 and 1983, the PYC used Lot 2 for overflow parking on an occasional basis for special events. Commencing at some time prior to 1965, those special events included the Monhegan Race, the Pilot Races, inter club regattas and perhaps another race in any given year. These races have, on a varying basis, increased and decreased in popularity over the years; accordingly, between 1965 and today, certain races have been phased out and been replaced by others, but there have always been at least 3 major events. The Monhegan has been a constant event over the decades. Today, the PYC uses the field for the Junior Olympics as well.*

The Board voted 4-0 to adopt Finding 9: *At various times, the PYC has also hosted Thursday night and week end races. Each year commencing at some time prior to 1965 and 1983, a few Thursday night races and one or two super weather weekends that followed prolonged bad weather generated enough participants and boating activity so that PYC used Lot 2 for overflow parking.*

The Board voted 4-0 to adopt Finding 10: *By letter dated September 12, 1999 to former CEO, Paul Griesbach, the Kurlanskis itemized the extent of the PYC's use of Lot 2 for parking, contending it was a violation of Section 9.1 the Ordinance.*

The Board voted 4-0 to adopt Finding 11: *By letter dated October 19, 1999, the Town's former CEO Griesbach issued the 1999 Decision. In it he stated:*

As I see it, the overflow parking issue is a violation of the Planning Board Site Plan Approval and Section 9.1 of the Zoning and Site Plan Review Ordinance, which prohibits the establishment of a parking area without approval by the Planning Board. I have been convinced by Mr. Kurlanski's tally of parking activity on the lawn area in question that a parking area has been established and that it's [sic] use is too frequent to be considered "occasional," as was my initial reading of the situation. My earlier visit to the Yacht Club left me with the

impression that only on special and very occasional events would extra parking be required. This appears not to be the case.

At this time, I am asking you to cease parking on the lawn area in question. If you anticipate the same or similar activities in the future, please file an application with the Planning Department to secure site plan approval for the expanded parking. If you think I have misunderstood the facts or have made some error in applying the Town's ordinances, please call. You also have the right to appeal this decision to the Zoning Board of Appeals.

The Board voted 4-0 to adopt Finding 12: *The 1999 Decision addressed the issue of whether an area for parking has been established within the meaning of Section 9.1 of the Ordinance, not the issue of whether an established area for parking was grandfathered.*

The Board voted 4-0 to adopt Finding 13: *After the PYC received the 1999 Decision, it agreed to limit use of Lot 2 to overflow parking three times a year, but the PYC expressly reserved its right to assert that parking at a greater level was grandfathered. PYC indicated that it might be seeking confirmation that the continued use of Lot 2 at pre Ordinance levels was grandfathered.*

The Board voted 4-0 to adopt Finding 14: *By email dated July 5, 2007 to the Kurlanskis, Chuck Sanders, representing the PYC, said the PYC has "never limited our use of the field [to three times per year as allowed by the Town]" and "cannot reduce the daytime use of the field . . . to seven or eight weekends or two day events."*

The Board voted 4-0 to adopt Finding 15: *Starting in 1999, the PYC's use of the field for overflow and even regular parking increased substantially over the 1965 and 1983 levels.*

The Board voted 4-0 to adopt Finding 16 after amending the language to correct the gender of Ms. Leigh Palmer: *The PYC acknowledged the increased use of the field for parking in two May 22, 2000 letters, including one from PYC's Vice Commodore, Leigh Palmer. In Ms. Palmer's letter, she admitted that PYC "parking policies have been poorly enforced over the past few years allowing cars to park in our field on a more constant pattern." Ms. Palmer also noted that "historically, we have used our field on special occasions when the Club has hosted large regattas (such as the Monhegan Race) or when an event occurs in which many of our members participate (such as M.S. Regatta hosted by Handy Boat)." Ms. Palmer stated that races and events come and go, but that every year has its special events. She outlined five events PYC had planned for 2000.*

The Board voted 4-0 to adopt Finding 17: *In letters sent in the Spring and Summer of 2009, the Kurlanskis again complained to the CEO and the Town Manager that the level of parking on Lot 2 continued to be a violation of the Ordinance. The Kurlanskis requested action by the Town. They stated that the expanded use of Lot 2 for parking by the PYC had a detrimental effect on the use and enjoyment of their property.*

The Board voted 4-0 to adopt Finding 18: *Former CEO Albert Farris issued the 2009 Decision by letter dated August 6, 2009. In it, he determined that the parking use of the PYC was grandfathered as having predated the 1965 enactment of the Ordinance. He did not articulate what the 1965 level of parking was.*

The Board voted 4-0 to adopt Finding 19: *No evidence was presented by the Kurlanskis or the PYC as to the date Section 9.1(d) of the Ordinance was adopted. The Town's Community Planning Director indicated on the record that she thought it was 1983.*

The Board voted 4-0 to adopt Finding 20: *Since 1999, PYC has increased its use of Lot 2. There were years when parking on Lot 2 was over and above both 1965 and 1983 levels.*

The Board deliberated on Finding 21.

Stan Given was concerned that they haven't had any indication of what the frequency of use has been.

Dennis Keeler thought it jumps to what they think is grandfathered. He heard testimony that in some cases, the frequency has been significantly more. Whether it is many if not most of the weekends, he felt that statement might be a little strong.

Stan Given said they heard testimony about 12 events a year currently. One of the findings stated 5 events a year. He thought it might be helpful to establish what they are experiencing now.

Dennis Keeler asked if he is suggesting another finding on what the historical use is. They get to that in the Conditions of Law.

Stan Given said in some findings they have historic numbers, 3-5 for example. Finding 21 implies increase but they don't identify a number.

Dennis Keeler didn't think they are trying to put a number on it; it is a statement that sometimes the use has exceeded historic use. There is legal authority that says that they will overlook some increase based on quality.

Stan Given said this captures the testimony, but doesn't reflect testimony of current use which included a number.

Dennis Keeler thought perhaps what is missing is a finding of what the testimony has revealed as a historic use.

Jon Berry thought that there was such conflicting testimony that they couldn't pin down "current usage". They elected to not treat that issue specifically because they didn't need to; they focused on what the historic usage was and once the use exceeded that level in scope it made Al Farris's 2009 letter actionable.

Dennis Keeler agreed with Stan Given but wasn't sure he was prepared to agree on what that number was. He wasn't sure if they needed to establish the current use, other than that it has exceeded the historic use. He asked for Attorney Pearce's advice.

Attorney Pearce said the initial question is whether the Kurlanskis have proved that there isn't a grandfathered use. If there is a grandfathered use, the question is whether the Kurlanskis have proved that the grandfathered use has been unlawfully enlarged or expanded. To determine that, they must find what the grandfathered use was. The final question is, if the grandfathered use has been exceeded, whether that expansion is unlawful. They should use the three part test provided by the law court that he discussed at the last hearing. He agreed that they don't need to decide a given number, 10 or 12 parking days for example, only that, if it is so, that the grandfathered amount has been exceeded. The Board can add to the finding about the current use.

Dennis Keeler thought the Board should address a finding as to what the historic use is in terms of what has been established, perhaps a range, a finding on whether that use has been exceeded and a finding that, if it has been exceeded, whether it was exceeded unlawfully. He suggested they make a finding as to what this Board finds to be the historic pre-1983 use of lot 2 for parking, keeping in mind that they are talking events and not days, since some of these events are two day events.

Attorney Pearce thought they should look at findings 8 and 9 for that information and either modify those or make a new finding.

Willie Audet asked if Dennis Keeler is looking at a range. Dennis Keeler said he was. Jon Berry was comfortable that findings 8 and 9 reliably stated the historical number. Dennis Keeler reviewed the findings. Willie Audet put his range at 6-12 events.

Stan Given argued that not all of those events required overflow parking. He had a hard time extracting a number out of this. He also looked at finding 16, in which the club stated their anticipation of 5 events in 2000.

Jon Berry said the specific testimony of Mr. Tolford was that the use was occasional; in that testimony he estimated 0-4 times a year from 1965 – 1979. Mr. Russell also said it was infrequent and estimated 7-8 times per year, with 12 to 50 cars per event. He thought they concluded that it was never so infrequent that the grandfathered use was extinguished. He didn't believe that there was any testimony on the record that it was used more than 8 times. It may be used more than that now, but for the grandfathered use it was not more than 8.

Dennis Keeler didn't think they could settle on a specific number, but he was comfortable with a range of 4-8. The discussion about 3 events was more of a settlement with the neighbors.

Finding 21 - The Board voted 4-0 to adopt the finding that the historic, grandfathered use of the lot for parking was in the range of 4-8 events a year.

Dennis Keeler asked the Board to determine if the actual use has exceeded the historic, grandfathered use.

Stan Given thought they should have something regarding the testimony they heard. He wasn't sure they should put a range on it.

Dennis Keeler wasn't sure they needed to put a number on it. For the purposes of a finding, he thought all they needed to determine was that the current use exceeded the historic use.

Jon Berry thought it sufficient to say that, as of the date of the Kurlanski complaint to Al Farris, the club's use of Lot 2 exceeded the scope as defined in Finding 21.

Finding 22: The Board voted 4-0 to adopt the finding that on occasion the historic grandfathered use has been exceeded.

Dennis Keeler asked if that use was expanded impermissibly. He asked the Board to review this based on the three part test.

Jon Berry felt that was included in the Conclusions of Law.

Dennis Keeler said the Conclusions of Law were divided into three parts: whether the Board had jurisdiction, whether the letter from Mr. Griesbach precluded the Town from issuing another decision in 2009, and finally the substantive grandfathered use.

Attorney Pearce said he is comfortable with the Board's decision on jurisdiction and preclusion. The Board has not debated about the historic use.

Dennis Keeler said none of the previous votes were final. The vote on the Conclusions of Law is the final vote, for purposes of the appeal period.

The Board voted 4-0 to adopt the Conclusion of Law relative to the issue of jurisdiction.

The Board voted 4-0 to adopt the Conclusion of Law relative to the issue of preclusion.

The Board discussed the Conclusion of Law relative to the grandfathered use. In a previous finding, the Board found the overflow parking is grandfathered up to 8 times a year.

Dennis Keeler asked the Board whether use of the lot in excess of 8 times a year is an impermissible expansion. The Board reviewed the three part test provided by Attorney Pearce at the July 27 meeting. Dennis Keeler said they must find whether the increase above 8 was of sufficient difference in character, quality and degree of impact on the neighborhood that it would be impermissible.

Willie Audet thought if it was every weekend, it would have a detrimental effect. He thought 12 events a year would be customary.

Stan Given was comfortable with the number 8; 12 would be a 50% increase. He said the guidelines they have don't talk about expansion of use, but whether it reflects the nature of use and general character when the ordinance took effect; regarding the character, quality and degree, maybe there is more cars, more noise than there used to be. Those aren't things they can decide here. From a numbers standpoint, he stands with the number 8; anything above a 50% increase would be significant.

Dennis Keeler thought 12 was virtually the entire summer. He thought there was a qualitative difference if there is parking there virtually every weekend. He thought, with parking in a residential neighborhood, he had a hard time with any expansion above the historic number. He thought going even to 9 events is a qualitative difference in a residential neighborhood.

Willie Audet said this was historically a vacation destination, not residential, when the club was built.

Dennis Keeler said they have established the historic use but today it is sitting in a residential area and, while they can't take away the historic number, he felt anything in excess of that historic use was a qualitative difference. He thought they had to review the impact on the neighbors to discuss the quality of impact. He thought they could have an argument on impact if they were discussing the number of cars, but he felt an increase in the number of events was an unfair expansion.

Willie Audet asked about the Thursday night events.

Dennis Keeler felt that was included in the 4-8 events. He thought there may be some flexibility in the number of cars, but that isn't before them.

Willie Audet asked if anything above 8 is an enforcement issue.

Jon Berry thought that wasn't their decision to make, but a determination of the CEO. They have determined the historic use, and the CEO would have to determine the qualitative impact of any use above that. He felt that, as of 2009 when the Kurlanskis complained, the testimony of the

record shows that historic use was 4-8 events a year, and the testimony of the club used the terms “occasionally” “infrequently”. He felt that there has been such a growth of use in frequency and quality that it has impermissibly expanded the grandfathered scope of use.

Willie Audet was fine with that.

Dennis Keeler said what was before them was the decision of the CEO, which was that the use was grandfathered, but didn’t clarify the scope of the grandfathered use. If the decision was read to allow more than 8 uses, they would find that the decision was improper. If the decision was read to be 8 or under they are saying that decision was accurate. He wondered if they overrule or sustain the decision.

Jon Berry thought the decision was crafted well, to the extent that if the decision is deemed to allow parking for more than 8 events they overrule that decision and grant the Kurlanskis’ appeal in that respect, and to the extent that if the decision is deemed to allow parking for 8 or less events per year they affirm that decision and deny the Kurlanski appeal in that respect.

Dennis Keeler wondered if they are then saying that there is no permissible expansion above 8 uses. According to the language of paragraph 2, he wondered whether it is permissible to use the lot 9 times in a year.

Jon Berry thought they don’t have to decide that; if the Kurlanskis come to the CEO and say the lot has been used 9 times, the CEO will have to determine whether that is an impermissible expansion.

The Board voted 4-0 to adopt the Conclusion of Law relative to grandfathered use.

The Board voted 4-0 to adopt Decision 1.

The Board voted 4-0 to adopt Decision 2.

The Board voted 4-0 to adopt Decision 3.

Attorney Pearce asked if the Board is applying the *Keith vs. Saco River Corridor Commission* criteria to the conclusion that the Club impermissibly expanded the use. He heard Dennis Keeler discuss that any increase over 8 would be a qualitative difference of degree but he didn’t think the Board voted that to be the case.

Dennis Keeler thought that, based on the evidence as set forth in the findings of fact they found that there were instances that exceeded, according to the test as put forth in *Keith vs. Saco River Corridor Commission*.

The Board voted 4-0 to amend the last paragraph of the Conclusion of Law relative to grandfathered use.

Jim Thibodeau left the meeting.

- c. **14 Marston Street, VEI LLC**, – Section 6.2.a Conditional Use application under Section 6.2b for additions. Parcel U44-028-A, zoned VMU.

Gene Villacci said this home encroaches on the front setback. This is a small home, 720 sq feet. The two porches are rotted and need to be redone. He is not looking to enlarge the front deck,

which encroaches two feet in to the 10 foot setback. He would like to rebuild it and put a canopy over it. He would like to extend the other deck 4 feet and put a canopy roof over that as well. He said the current kitchen is 9 feet wide by 11 feet long. He is going to turn the living room into a dining room and put a single floor addition with a frost wall and hip roof to create a 12x22 living room. He would also like to add a ¾ dormer on the back roof to provide usable space upstairs; it is currently an attic.

Public comment period opened; no public comment.

Willie Audet asked how Mr. Villacci measured for the site plan.

Mr. Villacci determined the boundary lines by talking with the neighbors, and some of the measurements are from when the septic was installed. He got a letter from the Public Works Department saying that they need 25 feet from the centerline. He measured it also from the GIS map. He is not looking to encroach further, but is looking to stay in the footprint of what is already there. The addition will be 14 feet back from the road in the front. He believed in the back they have 63 feet to the boundary.

Willie Audet asked if the addition is on the back of the house.

Mr. Villacci said no; the addition is on the side of the house. He showed where the addition is on the site plan.

Willie Audet asked if he located any pins.

Mr. Villacci said there aren't any. He went by information from the neighbors that the row of trees is the boundary line. He went by the GIS map, which agrees with the tree line. There is a rock in the front, at the road corner. He is trying to stay away from the front.

Willie Audet wanted to have verifiable information. There is no monumentation here. They are surmising that these distances are accurate and reliable.

Mr. Villacci said the information he used came from the Town and Public Works.

Willie Audet said the pavement wanders and is not always at the middle of the road. The centerline could be off by 2-3 feet.

Mr. Villacci said if he stays behind where the house currently sticks out he won't further encroach.

Dennis Keeler identified the different parts of the site plan. The addition is 14 feet back from the property line. Mr. Villacci said that is correct.

Dennis Keeler asked about the front porch.

Mr. Villacci said that is a very small porch; he wants to keep the same footprint but put a canopy over it and make it 18 inches wider on all sides. He could rebuild it as it is and would be no closer to the front setback than it already is.

Dennis Keeler asked if he could go sideways under 6.2.b.

Amanda Stearns said that under 6.2 b, as it is typically read, he could expand along the original structure as long as it is at least at the 10 foot setback mark. She would question the widening of the porch. Mr. Villacci is indicating that his measurement using the centerline shows the edge of the porch at 8 feet back.

Dennis Keeler saw this as an expansion within the 10 foot line. Amanda Stearns agreed.

Mr. Villacci said the steps are in the no-build zone. He could turn it and bring the steps sideways. He looked at it as a safety issue but he wasn't sure there is a way to do it.

Dennis Keeler asked where the kitchen is.

Mr. Villacci said the kitchen is on the side; he could move the front door to the gable end of the house. He asked if the roof over that front porch would also fall under that 10 foot limitation.

Dennis Keeler said it would.

Mr. Villacci asked if he could lengthen the porch on the side of the house and center it on the wall, keeping the same width so as not to encroach on the 20 foot setback.

Amanda Stearns said the side setback in the VMU is 15 feet.

Dennis Keeler asked Mr. Villacci to be very comfortable with his baseline measurements if he isn't going to have a proper survey.

Mr. Villacci said that is why he is trying to stay within the widths of what is currently there.

Stan Given suggested that Mr. Villacci get a survey before he pushes that out any further. He asked how many bedrooms there are.

Mr. Villacci said there are two bedrooms and it will stay two bedrooms. He hopes to move one of the bedrooms upstairs by having the dormer.

Stan Given asked if the septic system is sized for two bedrooms. Mr. Villacci said it is.

Jay Meyer said if Mr. Villacci wanted to do anything in the front, the location of the front line would be very important. The GIS lines are not accurate.

Mr. Villacci agreed; that is why he is trying not to do anything in the front.

Jay Meyer said Mr. Villacci would be well advised to have a survey. He asked about the porch out front.

Mr. Villacci said it is 6 feet wide – 3 feet for the deck and 3 feet for the steps. It is 8 feet from the property line.

Jay Meyer said expansion within the 10 foot setback is not allowed under 6.2.b. 6.9 also has a 10 foot minimum, and 6.5 allows him to replace but only exactly as it is. Putting anything within those 10 feet is basically not allowed. He asked if the living room is a 14 foot setback to the front.

Mr. Villacci said yes.

Jay Meyer said there is a 25 foot front setback, but he thought Mr. Villacci was okay with the addition as he is squaring off the house. He asked about the side porch.

Mr. Villacci said the porch is currently at the back of the house with a door that enters the kitchen. He wants to take the door out and move it to the living room. He will move the porch to the center of the wall. He wants to add 42" to the length of the porch and move it to the center of the building. He wondered if this change would fall under a normal building permit since it doesn't impact the setbacks.

Jay Meyer said Mr. Villacci would still come before the Board because it is an expansion on a nonconforming lot.

Mr. Villacci asked if he could get approval on the other parts of the application and then come back for the front porch.

Don Russell asked where the driveway is. Mr. Villacci said the driveway is on the side where the porch is.

Dennis Keeler asked if there is 42" between the house and the driveway. Mr. Villacci said yes, there is currently lawn there.

Willie Audet asked about the scale of the drawing. Mr. Villacci said there wasn't a scale. The measurements are accurate but they might not be to scale.

Jon Berry was appointed as the voting member for this item.

Jay Meyer wanted to remove the front porch from the motion. He asked the Board about the side porch.

Dennis Keeler thought the applicant was willing to remove that from the table for tonight. Mr. Villacci agreed.

Dennis Keeler moved to approve the application under 6.2.b for additions at U44-028-A except that the changes on the front of the house and the side of the house by the driveway are not approved. Willie Audet seconded.

Amanda Stearns asked to Board to clarify that the portion of the application of the side porch is tabled. The applicant has until November 11 to turn in new information. The Board agreed.

Motion carried 5-0.

d. 1 Jameson Drive, Georgia Kombakis - Section 5.22., Conditional Use application for an Accessory Dwelling. Parcel U35-015-001, zoned RAm.

Jon Berry recused himself on the basis of a personal relationship with Mr. Kombakis. He then left the meeting.

Mr. Kombakis explained that he would like to put an addition on his house for an in-law apartment for his mother.

Public comment period opened; no public comment.

Don Russell was appointed as a voting member.

Dennis Keeler asked if the drawing was to scale.

Rob Twombly, representing the applicant, said the drawing is from a plot plan and is close to scale. They are looking to add a kitchen/dinette area, living room, two bedrooms and a handicap-accessible bathroom.

Dennis Keeler asked if this is one-story. Mr. Twombly said it is; there is a cathedral ceiling.

Willie Audet asked the size of the main house.

Mr. Twombly said it is 28x40, and the garage is 24x28. The basement is completely finished on the side the family lives in; the garage has been finished above. They are accessing over 4,000 sq feet of living space. He explained that the tax card does not consider the basement, which didn't have heat the last time the assessor updated the card.

Willie Audet asked if the basement qualifies.

Amanda Stearns said the consideration is gross living area, so the basement qualifies. She did the calculation and came up with a gross 4096 sq feet of finished living area, which would not include the finished basement area. Nevertheless, they would meet the minimum and maximum limits for the accessory dwelling according to that calculation. She pointed out that the addition is already constructed; what they are doing is converting the existing addition into a dwelling.

Dennis Keeler asked what the addition is now.

Mr. Twombly said they are working on it now. If the accessory dwelling isn't approved Mr. Kombakis' parents will still need to move in. He would like to have the separate space for them.

Jay Meyer asked about a discrepancy in the lot size. The applicant confirmed that the number from the assessor's card is the correct one.

Jay Meyer discussed the additional entrance. Willie Audet argued that due to the roofline and its location on the side, the second entrance is subordinate.

Stan Given moved to approve the application. Dennis Keeler seconded. Motion carried 5-0.

- e. **24 Amerescoggin Drive, Dennis O'Brien representing Kristen Greer** - Section 6.2b Conditional Use application and Section 8.5, Set Back Variance for an expansion. Parcel U18-057, zoned RA and LR.

Dennis O'Brien provided the Board with a letter from Kristen Greer designating him to represent her, as well as some cubic footage measurements. Ms. Greer has a very steep driveway; it has an 8% grade. She would like to have a garage connected to the house, with a mudroom and the space above it for another bedroom. This property is in the shoreland zone and he has hired Sevee and Maher to establish top of bank so they can get the 100 foot measurement. This was a hotel at one time. There have been other structures on the property that have been torn down and one structure remains. He wasn't sure whether to include that building in the 30% expansion limit.

Jay Meyer asked if that building is outside the 100 feet. Mr. O'Brien said yes.

Willie Audet asked if the 1 story wood building is used.

Mr. O'Brien said that she uses it for bedrooms when her father comes up in the summer but she doesn't use it for her family.

Willie Audet asked if it is accessory dwelling. Amanda Stearns said only if it had kitchen/bathroom facilities. It is a pre-existing structure. Mr. O'Brien thought it was 40-50 years old.

Public comment period opened; no public comment.

Jay Meyer pointed out that a letter was received by the Board from the neighbor.

Mr. O'Brien said the neighbor was concerned about impact on his view. Mr. O'Brien didn't feel that this would have any impact.

Willie Audet asked if the abutter had been sent sketches. Mr. O'Brien said yes.

Stan Given asked him to identify where that neighbor's home is located. Mr. O'Brien said he is on the ocean side.

Jay Meyer addressed the request for a setback variance; they are saying there is a 20 foot setback on the side and the addition would be within 16 feet. Under 6.2.b, the squaring off provision, they would be allowed to come within 10 feet of the line.

Dennis Keeler asked about the garage.

Amanda Stearns said staff interpretation is that if the garage is attached it is included as one structure under the single family detached dwelling.

Don Russell asked about the neighbor.

Mr. O'Brien said according to the survey the line of trees, along with part of the neighbor's driveway, are both on Ms. Greer's lot. There will be no impact on the neighbor's water views from this application.

Willie Audet said there is an error on the plan; it is listed at 39' from the addition to the abutter's home; that should be 29'.

Dennis Keeler asked if the garage is the only thing that is happening. Mr. O'Brien said there is a garage and mudroom. The addition is 17x20 feet with two stories, and the garage is 24x27 feet.

Dennis Keeler asked if he is under the height limit. Mr. O'Brien said there are right and left side elevations in the application and the plans are to scale.

Willie Audet measured the full size plans and said the roof height is 24 feet.

Dennis Keeler said height is measured at average grade at 20 feet. He asked about the drop off.

Mr. O'Brien said there is a 2-3 foot grade drop off over the entire distance of the house. There is a 6-8 foot grade drop coming to the house.

Dennis Keeler asked for lot coverage ratios.

Willie Audet said that was on the handout. The lot size on the site plan is 17,000 sq feet.

Mr. O'Brien said that was what the designer came up with from her measurements. The tax maps show 15,246 sq feet. He was fine with the number on the assessor's map.

The Board discussed the lot coverage. The percentage was not submitted.

Amanda Stearns said the information submitted addresses the 30% expansion limit, but the calculations for the 20% non-vegetative allowance under shoreland zoning was not submitted. He would need to calculate all the non-vegetated surfaces off the survey, including the driveway and any patios.

Mr. O'Brien didn't realize that at the time; he thought it was just the sq footage of the first floor. He asked if the driveway would be removed from the calculations if it was unpaved.

Jay Meyer asked if that was impervious or non-vegetated.

Amanda Stearns said it was non-vegetated. It would be hard to reach that with a driveway. The whole purpose is that it is green space.

The Board discussed whether the floor area and volume calculations met the 30% expansion limit. They could not make a determination based on the information available.

Amanda Stearns said that technically the Board would need to evaluate the 50% lot coverage, even though the shoreland 20% non-vegetated limit is more restrictive.

Stan Given asked what the house looks like now and whether the roof will have a valley.

Mr. O'Brien said the one side will not have a valley; the other side will. He wanted the hip roof look

Dennis Keeler moved to table; Willie Audet seconded. Motion carried 5-0.

5. Other Business

There was no other business before the Board.

6. Adjourn

Meeting adjourned 9:51 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary