TOWN OF FALMOUTH Board of Zoning Appeals Minutes Tuesday, February 22, 2011

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

MEMBERS ABSENT - Willie Audet, Jim Thibodeau

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

Jonathan Berry and Don Russell were appointed as voting members.

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).

The minutes were tabled pending review.

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

Amanda Stearns said that, while not everything is on the site plan, everything has been submitted for the Theisen application. Ms. Theisen feels that she can present the necessary information to the Board.

The Board discussed whether the Theisen application is complete. The ordinance is very specific as to the requirements for a site plan and a building plan. Jay Meyer said the Board has questions about square footage, and there are no dimensions on the plan.

Don Russell moved to proceed with the application as submitted. Jon Berry seconded for purposes of conversation.

Jon Berry didn't feel the Board had the authority to pick and choose; the ordinance calls for very specific information. Unfairness results when the Board picks and chooses which application they can muddle through and which are incomplete.

Ms. Theisen said she had submitted her application previously and withdrew it. No one told her at that time that her site plan was insufficient. There have only been minor modifications to the plan since them.

Jon Berry explained that there has been no direction to staff to tell applicants that their application is deficient; applications have been passed to the Board. The ordinance under which she has applied is more specific than some others as to the requirements.

Don Russell felt they knew what she intends to do, and it is common sense to go along with it. He felt it was unfair to the applicant to go back on a procedural issue; he didn't think they should make her wait another month.

Stan Given was sympathetic, but he agreed with Jon Berry. They are bound by the ordinance, and they have been making an effort to get applications that meet the ordinance. While she is not making any changes to the footprint, there are no lot sizes, lot area, etc. on this plan.

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Dennis Keeler said the ordinance is clear as to the requirements. It wasn't clear to him that this was a scaled drawing, the building plan doesn't show the plumbing facilities, and there is no site plan. One required item isn't even here. They have turned people away when a required submission item didn't meet the necessary requirements.

Jay Meyer said the ordinance is clear as to what is required for accessory dwellings, and those requirements are not met here. This is a fairly simple application. The Board probably could get the information they needed by talking through it, but it is a disservice to the neighbors who might want to look at what is being requested.

Motion failed 1-4 (Russell).

The other applications were deemed to be complete.

4. Applications

a. 30 Johnson Rd, Rick Libby representing Sue & Duncan Geikie – Conditional Use under Section 6.2.a for an addition. Parcel U19-016, zoned RA.

Richard Libby, representing the applicants, explained that they want to add a single-story addition to the existing home.

Public comment period opened. No public comment.

Jon Berry asked about patios. Amanda Stearns said patios fall outside the definition of a structure and so do not have to meet setbacks.

Dennis Keeler asked why the proposed addition has hash marks on the plan. Mr. Libby said that is to show living space. The dots on the proposed patio are to differentiate it.

Dennis Keeler asked if all that is new. Mr. Libby said that was correct.

Dennis Keeler asked about the composition of the patio. Mr. Libby said it would be removable pavers.

Dennis Keeler asked if the proposed structure will fall within the setbacks. Mr. Libby said yes, including the roof overhang.

Dennis Keeler observed that it is really tight in that corner. Mr. Libby said there is a 6 inch leeway there, including the overhangs; this was done by a licensed surveyor.

Dennis Keeler said if the Board approves this it is with the representation that it does not encroach. He cautioned Mr. Libby to be very careful during construction. Mr. Libby said he understood.

Dennis Keeler asked Amanda Stearns if the proposed bay window meets the "squaring off" provision. Amanda Stearns said yes, it meets that rule: "no further encroachment than the existing structure".

Dennis Keeler asked if any protuberance of the structure can be used for that measurement. Amanda Stearns said yes. It is part of the structure.

Stan Given said the plan is stamped but not signed. Typically they require a signature. He would like a confirmation of the existing bay window. Mr. Libby said he does have a signed survey.

Amanda Stearns suggested a condition of approval that the applicant submits the survey.

Jay Meyer agreed with Dennis Keeler and Stan Given. He asked if the existing bay window is closer to the street than the proposed window will be.

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Mr. Libby said that was correct. The current house does not have a 6 inch overhang and they will hire a surveyor to come out and make sure that they conform to the setbacks.

Dennis Keeler moved to approve the application under 6.2a with the condition that a signed plan be submitted to the office and that the addition shall not come closer than 20 feet to the side property line; Stan Given seconded. Motion carried 5-0.

b. 176 Foreside Rd, Horace Horton representing Edward P. and E. Marie Manganello-Conditional Use under Section 6.2.b for an addition. Parcel U14-004, zoned RA.

Horace Horton, representing the Manganellos, discussed the application. They are planning a one bay addition to the existing garage. The addition would be 13.5' by 27'. He presented a color photo of the home with a representation of the proposed addition to the Board. There is no side setback problem; the rear lot line will match the existing garage. The addition will not detract from the existing residence.

Public comment period opened; no public comment.

Dennis Keeler asked if they had a height issue with this property.

Amanda Stearns didn't think they submitted the height of the building, but the proposed addition with the shed roof is significantly shorter than the existing garage.

Dennis Keeler asked about the aerial photo which doesn't show the garage. Amanda Stearns said the aerial photos predate the most recent addition to the home.

Jay Meyer said this appears to be a conforming lot, but the home has additions that have been approved under variances or conditional uses. He asked if the house is a non-conforming structure.

Mr. Horton said it is non-conforming because of the rear line setback; the rear line of the original structure is 23 feet from the rear lot line, and not 40 feet. Both of the approvals obtained continue that rear line of the structure. It was a non-conforming structure to begin with.

Jay Meyer asked if the original extension of the structure into that rear setback was allowed by variance.

Mr. Horton said no, the original addition of the house was to the side. The distance from the rear line to the original home was 23 feet.

Jay Meyer asked if that are was what was approved by the variance in 1975. Mr. Horton was not familiar with the 1975 variance.

Stan Given moved to approve the application under 6.2b; Don Russell seconded. Motion carried 5-0.

c.17 Middle Rd, Amy Theisen - Conditional Use under Section 5.22.1 for an Accessory Dwelling Unit. Parcel R04-050, zoned RAm.

Item tabled by the Board.

d. 22 Mill Rd, Dino Spugnardi- Conditional Use under Section 6.ll for a tear down/rebuild and expansion. Parcel U40-014, zoned RB/RP/LR.

Mr. Spugnardi said that this was approved in 2009; he thought this application was just a re-approval and so he submitted only those materials that were previously submitted. Now town staff has said that there is a problem with the property meeting the 20% non-vegetated limit on lot coverage in the Shoreland Zone.

Amanda Stearns explained that the applicant needed to determine the current non-vegetated lot coverage; with the expansion he can not increase the non-vegetated coverage if it is over the 20% limit.

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Mr. Spugnardi submitted new plans to the Board, which showed the lot coverage. He said when he went to put the two parking spaces on the other plan that was approved he discovered that they were at 21% lot coverage. He put together another plan that meets the 20% limit to replace the one that was approved before, which he submitted to the Board.

Dennis Keeler asked for clarification as to what plan is before the Board for approval tonight. Mr. Spugnardi said that the plans he just submitted; he wanted the Board to approve both of them.

Stan Given asked for further clarification on the plans Mr. Spugnardi wants approved.

Mr. Spugnardi said the plan showing revision "A" dated 12/23/08 and the plan showing revision "B" dated 2/12/09 were approved in 2009. One of the plans submitted tonight, dated 2/22/11, shows a different building plan with the two parking spaces included and meets all the requirements. The other plan submitted tonight is also dated 12/23/08.

Public comment period opened. No public comment.

Stan Given asked who did the survey.

Mr. Spugnardi said Titcomb Associates did it; it was submitted with the original application. Amanda Stearns said there isn't one in the file.

Stan Given said he has not had enough time to review the new plans.

Mr. Spugnardi said he would then take the one plan that is the same as the one that was approved originally, showing the addition of the two parking spaces as requested and that they meet the 20% coverage limit. This is the plan submitted tonight and dated 12/23/08.

Stan Given asked about the note on the plan referencing the allowed lot coverage. One note says 50%, and the other says 20%.

Amanda Stearns explained that 6.9 allows up to 50% lot coverage, but in the shoreland zone there is a more restrictive allowance of 20% non-vegetated lot coverage.

Jon Berry suggested, for the sake of the record, labeling the plan dated 12/23/08, revised 2/12/09, plan 1. The other plan (dated 2/22/11) would be Plan 2. He asked if it is Mr. Spugnardi's intent to sell this lot with the plan as approved.

Mr. Spugnardi said that was his intent. No one will buy the property until they know that it is a buildable lot

Jon Berry asked if Amanda Stearns was comfortable that Plan 1 was the plan approved in 2009 with the addition of the parking spaces. Amanda Stearns felt that it was.

Jon Berry asked if Mr. Spugnardi was comfortable proceeding with Plan 1. Mr. Spugnardi said he was.

The Board proceeded to review Plan 1.

Dennis Keeler said the proposed height went from 24.5 to 24 feet. Mr. Spugnardi said he was surprised with the change. It was supposed to be the same.

Amanda Stearns said the height listed in the table on the first sheet is different than what is listed in the elevation.

Dennis Keeler said this is in the LR and RP Shoreland districts. He asked about Planning Board approval.

Amanda Stearns said there is only a small portion in the RP zone, and that is not the portion of the property where he intends to place the residence.

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Jay Meyer said section 6.9 is limited to a single-family detached dwelling. He asked if the applicant was clear about the use. Mr. Spugnardi said single-family is the only use the property was approved for.

Jay Meyer asked if they are going right up to the 30% expansion allowed under shoreland zoning. Mr. Spugnardi said yes; it is a very small property.

Amanda Stearns said that she accepted his calculations, and they would also be reviewed when he applies for a building permit.

Jay Meyer asked if Ms. Stearns was satisfied that the setback from the shoreland zone was met to the greatest extent practicable.

Amanda Stearns said the scenario Mr. Spugnardi asked to have reviewed tonight meets both the coverage requirement and the setback requirement to the greatest extent.

Dennis Keeler moved to approve the application under 6.11 and 6.9 on the basis of what has been identified by the Board as Plan 1, dated 12/23/08 with a revision B date of 2/12/09. This plan shows two parking spaces. Don Russell seconded.

Amanda Stearns suggested some conditions, carried over from the previous application: that a new copy of the boundary survey will be submitted; that the property is limited to single family residence; and that any substantive change would require the owner to return to the Board.

Jon Berry didn't want to specify "substantive". The plan is the plan, and if a future owner wants to deviate from the plan, they need to come back before the Board.

Mr. Spugnardi asked if that would apply if a change fell within the agreed boundary lines.

Jay Meyer said it currently falls right at the allowed limit; in this case they have to be strict. Dennis Keeler said the applicant is at the limit of all the allowances in the ordinance.

Mr. Spugnardi asked about a project that was below all those limits.

Jon Berry suggested that the owner could see the code officer to determine whether a modification would require Board approval or not.

Jay Meyer felt the code office could approve a plan that was more compliant with the ordinance than that which was approved.

Amanda Stearns pointed out that if there is no condition, then the plan that was approved rules. The code officer would then determine whether the building met the approved plan or not. This would allow some flexibility for the code officer to determine whether the building is substantially compliant with that which was approved.

Dennis Keeler amended the motion to include a condition that another copy of the boundary survey be submitted to the office, and that the approval is limited to a single family detached dwelling. Don Russell seconded.

Motion carried 5-0.

e. 5 Mason St, William J. & Linda M. Lundborg- Conditional Use under Section 6.2.b for an addition. Parcel U16-032, zoned RA.

Bruce Butler, representing the Lundborgs, presented the application. This is a non-conforming lot in setbacks, size and coverage. The roof overhang over the proposed new front entrance does not encroach on the 20 foot side setback. The infill is a squaring off of the existing building. The two existing decks are where the modifications are planned. There is one circular stair that serves the levels of the home. This is

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a dangerous situation; the applicants would rather have a code-compliant staircase. The main level deck would become a kitchen; the deck on the top floor would have a roof and screened walls and become a 2-3 season deck. The allowed side setback is 20 feet. The expansion in that direction is the roof overhang over the entry door and does not encroach. The increase to the footprint will be 1.55%; the building lot coverage is 25%; 50% is allowed. The new stair proposed would come to a landing. That landing would come to a granite step and an existing terrace.

Public comment period opened; no public comment.

Stan Given asked about a red line on the plan. Mr. Butler said the dark dashed line on the plans shows the allowable building envelope; he discussed the dimensions on each side.

Amanda Stearns said that, since the building sits within the 10 foot allowance, she suggested to the applicant that he show on the plan what would be allowed on this property under current zoning. The front setback of 25 feet and the rear setback of 40 feet would overlap on this property.

Stan Given asked about the distance from the proposed roof overhang and the side setback. Everything else is within the existing footprint.

Amanda Stearns said the roof overhang has to comply with the 18.3 foot setback. She identified the side setback on the plan.

Dennis Keeler asked for clarification on what is proposed.

Mr. Butler identified on the elevations what is proposed for the two decks, the new entryway roof and the granite step. Those are the only external changes; all the other changes are internal. The Lundborgs own the abutting property, on which they recently tore down the home, but they are planning to sell that lot.

Dennis Keeler asked if the screened porch complies with the 10 foot requirement on the Mason St. side.

Amanda Stearns said it does.

Jay Meyer asked if there is an encroachment into the 10 foot required separation due to the new roof.

Mr. Butler looked at it again and thought that yes, it appeared that it might.

Jay Meyer thought that the ordinance doesn't allow any encroachment of the expansion into the 10 feet, even if the existing footprint encroaches. He asked how close to the line the new roof would be.

Mr. Butler didn't know; it didn't show in any of the elevations.

Jay Meyer asked if there is an easement with the property identified as N/F McCarty; it appears as if the building extends over that line.

Mr. Butler didn't know; it has been that way since the building was built.

Jay Meyer said that there are some modifications shown along that side of the building. Mr. Butler said that is a new window and interior doors.

Jay Meyer asked about the granite step. Amanda Stearns said it is a single, granite step and would not be counted as a structure.

Jay Meyer asked about a solution if the roof overhang on the third floor roof encroaches on the 10 foot limit.

Mr. Butler said they have reviewed that deck several times; the overhang is important and he wasn't sure how to pull those edges in to meet those requirements. The intention is to screen it in so they can use it at night. He requested a condition on the approval that the roof must abide by the 10 feet and that nothing be outside that line. He asked if it is an expansion, since it is only a roof.

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Amanda Stearns said the addition of a roof is what causes the expansion. Adding walls to a roofed deck would not be considered an expansion.

Dennis Keeler asked about sliding the deck over. Mr. Butler said the deck is centered on the peak and the doors and doesn't have a lot of room to move.

Stan Given moved to approve the application under 6.2b with the condition that they maintain the 10 foot setback on the upper balcony addition. Don Russell seconded.

Dennis Keeler suggested that the applicant be required to present some evidence to the code office that they satisfy the 10 foot requirement.

Stan Given amended the motion to include Dennis Keeler's statement. Don Russell seconded.

Motion carried 5-0.

f. 358 Gray Rd, Falmouth Rod & **Gun Club-** Administrative Appeal of a decision by the Code Enforcement Officer. Parcel R06-059-A, zoned FF. (**tabled**)

Tabled prior to the meeting.

5. Other Business

a. Discussion of Section 8.3.e., criteria for conditional use permit regarding significant impact on water views.

Don Russell read an excerpt from an email written by Al Farris, former CEO, regarding this issue and the need for a benchmark for the term "significant impact on water views". He proposed that the BZA interpret the language of section 8.3 e "Will not have a significant adverse impact on water views from adjacent and nearby properties and public right of ways" as follows:

- 1. The loss of 50% or more of the field of view AREA showing water from the BEST SINGLE, Winter, (no foliage), view from the complainants HOME.
 - a. The area of this view, before and after the proposed construction, shall be calculated using a normal camera lens, (no magnification) and superimposed simulation of new construction to the same scale.
 - b. Public Comment by Falmouth residents will be heard, but opposition to the proposed construction by relatives, friends and neighbors shall not be decisive in determining the outcome of the challenge.
- 2. The loss of 50% or more of the field of view AREA showing water from the BEST SINGLE, Winter, (no foliage), view from an adjacent PUBLIC RIGHT of WAY by a Falmouth resident complainant must meet the same tests as a. and b. above.(Views from Driveways and Private Rights of Way are not subject to this criteria.)

Jay Meyer asked if this interpretive standard would be a hard and fast rule; for example a 49% loss of view would be deemed insignificant, and 50% would be significant.

Don Russell said it would be whatever standard they set. Mr. Farris said 50%; he thought they easily could say 40%. In his application it was 1/10% and the Board was swayed by testimony of the abutter's relatives and friends.

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Jay Meyer asked how they would adopt this; this Board does not have the power to alter the ordinance, just to interpret the ordinance.

Don Russell said Mr. Farris suggested defining significant as a certain percentage of area.

Jon Berry felt they had met on this issue. This particular section stirs up more heated exchange than any other section. He thought Mr. Farris was going to draft up something to be forwarded to the Town Council for amendment.

Don Russell asked if the Board has the authority to say that any view is significant; that is what has happened in the past.

Jon Berry didn't think so. He didn't think any of the Board members have a hard and fast rule that any impact on water views is significant. He felt without Town Council approval they don't have the authority to make a definition for significant.

The Board discussed in detail the proposed interpretation submitted by Don Russell.

Jay Meyer suggested a different approach. Judges often use a multiple factor framework, including elements such as whether the view is of something scenic (like Portland Head Light); the seasonality of the view; the extent of blockage and also if it is blocking multiple views from the home, one view, or all the view; efforts to mitigate the impact on the view; and whether there are other options.

The Board discussed different methods of addressing the issue, including bringing the issue to the Council.

The Board was interested in having a workshop session with Town Attorney Bill Plouffe sometime in the spring.

b. Discussion of Election of Chair and Vice-Chair and date of the March meeting.

Jay Meyer will be gone the week of March 22; he asked the Board about moving the date of the March meeting to March 29.

The Board agreed to move the March meeting to March 29.

The annual election of officers will be placed on the March agenda.

The discussion regarding the ordinance will also be placed on the March agenda.

6. Adjourn

Meeting adjourned 9:36 pm.

Respectfully submitted,

Melissa Tryon Recording Secretary