# TOWN OF FALMOUTH Board of Zoning Appeals Minutes Tuesday, April 26, 2011

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

**MEMBERS ABSENT** – Willie Audet, Jim Thibodeau, Stan Given

STAFF PRESENT –Justin Brown, Acting Code Enforcement Officer

Jon Berry and Don Russell were appointed as voting members.

#### 1. Call to Order:

The meeting was called to order at 6:33 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. The Board determined that all applications were complete.

## 4. Applications

**a. 18 Harding Rd, Richard & Ann Bayer-** Conditional Use under Section 6.2.a for an addition. Parcel U04-062, zoned RA.

Rich Bayer had an application for a small mud room to be attached to his house. The lot was nonconforming in it was under the minimum number of square feet and there may be a road frontage issue for that zone. The proposed mudroom did not go near any of the setbacks and it was 12'x14'.

Public comment period opened; no public comment.

Dennis Keeler asked about the box within the lot line and its representation on the diagram.

Mr. Bayer clarified that it was the rectangle of the parcel. It went out 14' and was 47.5' away from the side line. The X through the box represented a garage that was cut from the proposal. The box was copied and pasted from the Town's site.

Jay Meyer asked if the mudroom will be as substantial as it appeared on the plans without the attached garage.

Mr. Bayer gave a more recent depiction which was accurate.

Dennis Keeler moved to approve for conditional use under section 6.2.a for an addition; Jon Barry seconded. The motion carried 4-0.

**b.** Harding Ave, Jane Weed representing Charles P. Willson – Tabled from November 2010, Conditional Use application under Section 6.7 to build a single family dwelling. Parcel U04-038, zoned RA.

Jane Weed said that she wanted to build a house. Her real estate broker, Greg Fontaine, said that they had been tabled in November because abutters had a question of water drainage. A drainage site plan was submitted. The lot was 100'x110'and nonconforming for that zone. The plan was to build a single family dwelling and which could meet all setbacks. Information on elevations and the house itself were included in the packet.

Public comment period opened.

Shelly Dalberto, immediate abutter, explained her issues with site plan. She was worried about the house being built up with water drainage. She showed pictures of other properties having drainage issues in the vicinity. The extra water drained onto adjacent properties and created a build up. She did not want the paper street next door to be blocked as well.

Dennis Keeler asked what was physically at the paper road.

Ms. Dalberto explained it was a dirt road people use frequently with some shrubs.

Dennis Keeler also asked where she lived.

Ms. Dalberto replied that she lived behind the lot in question.

Dennis Keeler then asked for clarification on the pictures.

Ms. Dalberto explained that the house was built up so the water drained to other properties where the owners were losing trees. She asked that water not flow onto her property.

Don Russell asked Justin Brown if he had visited and wondered about the drainage.

Justin Brown said that he had but did not think of drainage issues, and that he did not have an opinion since he had not seen the site for quite some time.

Jon Berry recalled her concerns.

Jay Meyer wanted to clarify that her two concerns were the drainage and the paper street.

Ms. Dalberto said that was correct and continued saying that she was unable to rake her backyard because it was so wet, but as long as there was not a drainage problem she was fine with the house being built and was happy to see a drainage plan.

Jon Berry asked about other lands of Charles Wilson. He said that under section 6.7 the single vacant lot can not have been adjoined by another vacant lot in common ownership. Mr. Willson was conveying a property while holding onto other lands.

Mr. Fontaine said this was correct, and that the deed conveyed several pieces of land. He said that it was a separate lot but there was no specific deed for it.

Jon Berry said that the referenced exhibits refer to lots 159 and 160 on a plan that was previously recorded.

Mr. Fontaine said that was back in the 1940s when the lot was originally subdivided.

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Jon Berry said that that would mean that at some point they would be contiguous lots and the intent of the code was that those were to be joined under section 6.8 which stated that 2 or more nonconforming lots were supposed to be consolidated into conforming lots but they wouldn't be able to be redistributed into nonconforming lots. He said the deeds would make everything "clear as mud," and asked for clarification.

Mr. Fontaine said that the parcels that were deeded were not all contiguous pieces. From his understanding the deed referenced 158 or 159 and the two lots were 50' wide and 110' deep initially when the entire neighborhood was done and Mr. Wilson did own the two parcels. He said that a similar situation occurred in the same area. Two lots were owned by Mr. Wilson and sold as one. He owns no adjoining lands with this particular lot, just others in the neighborhood.

Dennis Keeler referred to the sketch plan and asked who owned the lot towards the top of the page.

Mr. Fontaine said that it was not Mr. Willson. He also said that on the Town website the lot was separate and taxed as a different parcel.

Dennis Keeler asked if historically lots 159 and 160 were taxed as a single parcel.

Jon Berry said that he did not suppose the Board needed to hold up the application any further and thought they could rectify any confusion by saying it was a condition that Mr. Willson will have to provide proof to Justin Brown that he was not essentially trying to divide a lot that was previously conjoined by operation of law.

Jay Meyer said the issue there was what the lot was in 1965.

Jon Berry said at the time of adoption of the code it had to be a nonconforming vacant lot from that time going forward. Then if at any time from the adoption of the code until now they were held in common ownership. They would then be prohibited from division.

Jay Meyer said that it appeared the lot was 159 and 160.

Mr. Fontaine said that they believed they could show through the chain of title with several deeds that those two individual lots were separate from anything else, and that Mr. Willson hadn't divided once to create another lot. They had always been separate from the other parcels.

Dennis Keeler asked if he had a date from when the lots came into him.

Jon Berry said that on the original application on page three the date was 2000. He said that he wasn't so concerned about the dates of transference but rather from 1965 on.

Jay Meyer asked Justin Brown if they had any history of the lots being separate.

Justin Brown said that he did not have anything in front of him but this had been brought up and looked at heavily, but not by him personally. He said that he did not remember it being an issue but could not say for certain.

Jay Meyer said that it could be made a condition, and asked Justin Brown if that would be something he would feel comfortable with.

Justin Brown said that it would and that he could easily walk upstairs and look at the history later.

Dennis Keeler asked to review the drainage site plan. He asked if there was a report that accompanied the plan.

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Mr. Fontaine said that the plan was all that was provided by Mr. Sweet, the drainage planner.

Dennis Keeler said the elevations that were drawn went from 32' to 31' and asked if that was an as-built situation.

Mr. Fontaine said that the elevations were what existed as is.

Dennis Keeler said that might not necessarily exist when the house would be built.

Mr. Fontaine said that he did not think the elevations were going to change. There would be drainage around the foundation and that Mr. Sweet felt they could drain everything to the front of the lot and keep it away from the back so it would be addressing the abutter's concerns, where there was an existing drainage at the front right if one would be facing the proposed house.

Dennis Keeler asked if he was familiar with the situation at the neighbor's house in the picture that was passed around. He continued to say that it was common to build the ground up when building the house so there was positive drainage, and asked if in an as-built situation the drainage was going to follow the same path.

Jay Meyer said that there was note saying as-built.

Dennis Keeler said that since there was no report, and in an as-built situation the gradation would change, he wanted clarification on an as-built situation.

Jay Meyer said they would have to do something as to not alter the grade.

Dennis Keeler said that he was concerned about the as-built situation and asked if there were any plans in the construction for any perimeter drains.

Mr. Fontaine said that he didn't have anything like that with him and that it was Mr. Sweet's intent that it would be incumbent upon them to keep levels the same as to not change the drainage.

Dennis Keeler asked if he expressed how he thought they should maintain the drainage.

Mr. Fontaine said that he did not and said that he assumed Mr. Sweet thought the construction would work that part out.

Dennis Keeler also wanted to make the point that the setbacks were very close. He said that it looked like 12-15 inches.

Mr. Fontaine said that it was 12 inches.

Dennis Keeler said that since it was so tight and since things happen in the building process to be wary of such a close setback.

Mr. Fontaine said they discussed this and had such plans drawn up to take that into account.

Ms. Dalberto added that there was another drain on the paper street, which made 3 drains total in the area.

Don Russell wanted to echoed Dennis Keeler's concern and said that he would want Justin Brown to view the site and confirm that the drainage will be adequate.

Justin Brown said that it could meet the code and flow where they want the water to flow, but it depended also what happened on site.

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Jay Meyer observed that they could put conditions on the approval to make sure that the drainage will be satisfactory. He also wondered about the paper street.

Mr. Fontaine said that the paper street will not be affected and that it was not part of their plan.

Jay Meyer said that they should make sure that the history of the lot made the sale of the lot valid.

He also said that one condition could be that the ground levels be maintained so that the drainage system is satisfied.

Dennis Keeler asked Justin Brown if that were a fair condition to put on him in order to make sure that the water drained in that direction. He asked if that required an as-built drainage plan.

Justin Brown said that it depended project to project. At the most severe he would have Mr. Sweet reaffirm the grades or drainage. From a code standpoint he could say the drainage must go away from house, but saying away from neighbors and down to street could be an issue, but thought it would be reasonable.

Dennis Keeler said that it was doable if someone was conscious of it and did it correctly.

Dennis Keeler moved to grant the application under section 6.7 with the condition that the applicant establish to the satisfaction of Justin Brown that it had been a single lot during all relevant times under the statute and to establish to the satisfaction to Justin Brown that all drainage post-construction will continue to flow towards the front or the front corner of the lot; Don Russell seconded.

Jay Meyer said he thought the conditions were sufficient as Dennis Keeler had said, and to be careful about being so close to the setback.

The motion carried 4-0.

**c. 8 Ayers Ct, James & Maura McGowan-**Conditional Use under Section 6.2.b and Section 6.11 for an addition, Parcel U17-066, zoned RA/LR

Jim McGowan submitted a conditional use application for an expansion on the kitchen and an expansion of a closet into a mudroom. It was nonconforming with respect to the setbacks. Part of the house was too close to a neighbor's house. Also part of the structure was within the 100' of the setback for the shorezone, although the expansion was within the 100' setback of the shorezone. Right then they exceeded the 20% impervious lot coverage standard, although they were prepared to mitigate and offset that by removing a deck. He asked the Board if they would consider as an option to remove a brick patio to more than offset the additional coverage. The new expansion would not exceed setbacks. Also the expansion itself of the mudroom adds 4.7' of structure over the deck. In addition there was a kitchen nook that was cantilevered out and did not go to the ground. There was an existing 6' long by 2' wide nook that they would like to expand by 6 additional feet, but assumed the entire 12'x2' area as an expansion. It wouldn't go all the way to the ground. 3 concrete piers with a wooden post on it would be the only things going all the way to the ground. The actual coverage area would be 3 10" in diameter piers, which would constitute less than 3 square feet.

Public comment period opened.

Richard Traynor, adjacent abutters, wanted to know when the work would be done and how extensive it would be. He wanted to know about the disturbance.

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Mr. McGowan explained that most of the work would be done in the kitchen; impact in the summer would be minimal. The mudroom was on the other side and would start work in the next couple of

Mr. Traynor felt that Mr. McGowan did not answer his questions.

Mr. McGowan replied that he didn't know the availability of contractors since he had not talked to any but wanted to have the work be done before the next snowfall.

Mr. Traynor said that he had not seen the drawings on the property but understood that there was a bump out that will be widened. He said that he had no objection, just the concern of disturbance.

Dennis Keeler asked about the deck and wanted confirmation that the McGowans' would be enclosing deck space. He also wanted Mr. McGowan to elaborate on the compensation the patio would provide.

Mr. McGowan confirmed the deck space and also said that there was a patio with brick on it they planned on removing to offset the cantilevered structure. He said that he was willing to take up 24 square feet of brick to fulfill this.

Jon Berry was more comfortable with the project because of the coverage ratio.

Jay Meyer asked Justin Brown to look at his notes, among other things volume increase, because it was shoreland. It was shown as 335 square feet and no volume calculations were done because it appeared to be so far low under 30%. He said that they had to look at volume calculations over the lifetime.

Justin Brown said that he did not note any volume calculations of his own.

Mr. McGowan knew the history and said in 1998 there was an expansion of the second floor of approximately 83 square feet. Also in 2006 the deck was added which added 213 square feet, so 296 square feet between the two. Total square footage equaled between 2600-3000 square feet, which constituted approximately 10%. He wanted to point out that the expansion is not in the shorezone setbacks so therefore it would not be subject to 30% rule but the 50% rule.

Justin Brown concurred.

Jay Meyer pointed out that there is a 250' area with shorezone for salt water.

Justin Brown confirmed this. He also pointed out that this was for volume and not square feet, so the deck would not add to the volume unless enclosed.

Mr. McGowan said that some of the deck would be covered by the proposed mudroom.

Justin Brown said that he did not remember seeing anything from the 83 square feet, but he did not take into consideration the deck for the volume question.

Jay Meyer said his real question was if he had any concern that Mr. McGowan would be butting against or exceeding the 30% rule.

Justin Brown said that no, he did not.

Jay Meyer asked about the expansion to the kitchen.

Justin Brown said that it would be calculated as conservatively as possible.

Jay Meyer said that one approach could be that there would not be any net increase in impervious surface. Don Russell moved to approve the application with conditional use under sections 6.2.b and 6.1.1 for an addition. Jay Meyer asked if there was a condition for an impervious surface; Jon Berry seconded with the amendment for a condition on impervious surface.

Jay Meyer said that he did not know if it was central in Don Russell's motion but wanted to clarify that he was suggesting that a condition be there so there would be no net increase to impervious surface.

Justin Brown said that it sounded like it would work just fine.

Don Russell wanted to add the aforementioned condition; Jon Berry seconded. The motion carried 4-0.

**d.** 11 Casco Terrace, Michael Ouinn- Conditional Use under Section 6.2.b for an addition. Parcel U17-048, zoned RA.

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Michael Quinn proposed to add a single story rectangular addition measuring 14'x30'. The addition was nonconforming because of the setbacks. There was a paper street. The addition would fall within the setbacks. He also tried to add some outdoor living space. Half of the addition was a 15'x15' outdoor covered porch. The existing one was 8'x8'.

Public comment period opened.

Brian Roberts, abutters across the street, asked about what 14' means.

Mr. Quinn explained that it would not come any closer to the street.

Jon Berry asked if everything was 20' away from adjacent properties.

Mr. Quinn said that all structures were. He said the shed had moved since the aerial photos had been taken.

Jay Meyer said that a structure under 100 square feet was not technically a structure.

Mr. Quinn said that the Wells Passageway, the paper street, was 10'away from the addition and the shed was 10' on the other side street, with the street being 10' wide.

Dennis Keeler noted that the addition was exactly 10' from the property line, which was the setback limit. He also asked how they dealt with overhangs.

Justin Brown said that any overhang would have to be shy of the 10', although gutters don't count. Dennis Keeler said that Mr. Quinn may want to think about pulling it back a little bit to account for any

Jay Meyer said that Mr. Quinn should not go over the line, especially with the basement being right on the line because he would have to come back before the Board and also pay a penalty.

Mr. Quinn said that he would take a look at that with the architect.

Dennis Keeler moved to approve the conditional use with the condition that everything satisfied the 10' setback under section 6.2.b; Jon Berry seconded the motion. The motion carried 4-0.

**e. 11 Payson Rd, Jenifer Akerblom Vogt & Dan T. Vogt-** Conditional Use under Section 6.2.b for an addition. Parcel U01-029, zoned RA.

Jay Meyer recused himself.

Mr. and Mrs. Vogt submitted an application for an addition to add a shed dormer on the back and a centered front gabled dormer. The structures would fall within the 10' property line and be 20' from structures on the abutting properties. They also proposed to raise the roof in the allowed limit, as well as centering the door in the front of the house. This would mean they would need to move the front steps. They would not be exceeding the length of the steps from the house which is 6'4". They also proposed to put a portico on top of the front steps. None of the overhangs would exceed the setbacks. Public comment period opened; no public comment.

Dennis Keeler asked for his own clarification on the map the couple provided.

Don Russell moved to approve the conditional use under section 6.2.b; Jon Barry seconded. The motion carried 3-0.

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

Item tabled prior to the hearing.

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**g. 7 Trillium Ln, Margo C. & Jack H. Simmons -** Conditional Use under Section 3.2/8.3 to establish a Kennel and under Section 8.4 for a Variance for the setback under Section 3.2 for a Kennel, Parcel R05-024-010, zoned FF.

Rob Crawford, on behalf of the Simmons, asked for a conditional use to use the property as a kennel. The Simmons's have a purchase and sale agreement with the Lenardsons, the current owners of 7 Trillium Lane. Mr. Crawford read the definition of a kennel as being 4 or more dogs but wanted to say the kennel that Jill Simmons wants to run was not a traditional noisy kennel with untrained dogs. He also wanted to address noise and traffic impacts and asked for a variance on the barn. The people two owners ago put the barn in with a 35' setback. Mr. Crawford wanted a variance because a structure for a kennel must have a 50' setback and stated that the previous owners did not plan on having a kennel. Mr. Crawford produced diagrams to show where structures were. Mr. Crawford said this case was not a home occupation and asked for the kennel to be a condition. He also said that training will be the only aspect of a kennel from the definition in the ordinance. The dog training will be very controlled. Another part of the variance was the Simmons' wanted to convert the barn into a training arena, which would also reduce any noise. The nearest residency was 300-400' of heavy forest. The classes would run from 9am-9pm with a maximum of 6 dogs in a class, with their owners, and they would last for an hour to an hour and a half. He wanted to ask the Board to consider the conditional use and then, if approved, wanted to look at the usage of the barn. The family would then like to ask for a variance of the barn since they would be converting the usage. It would cost around \$60,000 to move the barn 15' to meet the setback requirement. He argued that if the barn were not to be moved, it would not detrimentally hurt the neighborhood. Jill Simmons, the dog trainer, gave a description of herself. She was a teacher and has had years of

experience running animal facilities. She owned 3 Golden Retriever show dogs. They were renowned show dogs and extremely well-behaved. She said she was a rule follower and wanted to stress the elite nature of her business. She guaranteed that the dogs won't be barking. She has 3 dogs and 1 visiting dog. The programs that will be run will be canine good citizen, which she has had a number of years of experience as an evaluator, puppy kindergarten, and training for Seeing Eye dogs.

Dennis Keeler asked Ms. Simmons how many outside dogs would be there at a time.

Ms. Simmons said just one dog coming from a Westminster level breeder for a period of 8-12 weeks. The classes would have a maximum of 6 other dogs to go along with her three dogs and the dog she was training.

Dennis Keeler asked about the age of the dogs in training.

Ms. Simmons said usually puppies but other dogs too. They wouldn't be having problem or aggressive dogs. The dogs she was looking to train are typically those that will be show dogs or high end dogs. Jay Meyer asked for clarification on the number of dogs.

Ms. Simmons said that 6 other dogs with their owners, who were typically women in their 50s and 60s. Jack Simmons said that the word kennel was a scary word, but that was just the term in the ordinance. He said he and his wife built their old age home and said that if anyone were to not want loud, barking dogs and obnoxious neighbors, it would be him. They moved there to live quietly. He said that the Leonardson's have heavy equipment that made a lot of noise, but the dogs won't be as loud. He said the barn was perfectly suited to train small groups of dogs. He said that his daughter, Ms. Simmons, said they are really training the owner. Using the barn would make less commotion. Mr. Simmons said that the sale was conditioned on the ability of the Simmons' usage of the barn. They did not know at first that there was a problem with the setback. He continued to say that they would accept it as a condition for it not to be a barking kennel.

Jay Meyer asked where Mr. Simmons lives.

Mr. Simmons showed Jay Meyer on the map.

Public comment period opened; no public comment.

Ben Welch, of Whitney Farm Way, said he thought he was the closest abutter. He said that he didn't want a noisy breeding dog kennel and it was noisy when you have ten dogs. He said they can hear a barking

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dog in the neighborhood. He also stated that he could see the barn through the forest so it was not that dense. He just worried about the noise.

Jon Berry asked Mr. Welch if the testimony assuaged his concerns.

Mr. Welch said who was to say about the dogs. He said he didn't think every puppy was a \$50,000 puppy and regardless, puppies bark. He had a dog.

Jon Berry said that there were circumstances where even if the Simmons' were denied variance they couldn't use the barn and make their own shed. Their activities couldn't be prohibited under the act. Mr. Welch said that he realized that.

Linda La Vopa, of Whitney Farm Way, worried about the dogs barking. She also worried about the increase in traffic. She said she could see through the trees from where the barn was. She said everybody has a dog and that they bark.

Jay Meyer asked Mrs. La Vopa to indicate her house, which she did.

Jay Meyer also asked if she was aware of any other businesses in the area, like farms.

Mrs. La Vopa said that she did not know. She said she is not aware of any working farms.

Janine Lambert, of Whitney Farm Way, was worried about noise and light. She said she could see the light from the barn from her house. She said a lot ATVs, which the Leonardson's own, go right by her property. She thought that 9 pm seemed late. She asked the Board about conditional approval and what it would mean if they wanted to add more dogs or if they sold the house and another person wanted a kennel

Jay Meyer said that conditional use was when the Board puts on exceptions or limits on the business. He said that it depended on what conditions were on the house when it was sold, but the approval would go along with it.

Ms. Lambert said she heard the dog that Mr. Welch was talking about. She said she can hear the Leonardson's equipment and the ATV's. She thought 38 cars seemed like a lot.

Dave McConnell, of Whitney Farm Way, wanted to make the point that approval for usage carried through. He wanted to see conditions placed to deal with issues of traffic, light, and noise. He wanted to see a limitation of number of dogs, number of trips, and number of boarding dogs at the property. His central issue had to do with whether or not it was possible to peel off the variance application from the conditional use application.

Jay Meyer asked Mr. McConnell if in his view he thought that in the conditional use application if one of the factors was in what building the training was conducted in.

Mr. McConnell said yes and for him since the application said the applicant intended to use a structure inside the setback they would need a variance or to move the barn to a conforming distance. He wanted to point out that reasonable return was not maximum return.

Jay Meyer also asked Mr. McConnell if he could explain whether or not he thought the application would have to be looked as a home occupation since he used to serve on the Board of Zoning Appeals.

Mr. McConnell responded by saying they interpreted it as if someone was living in a home they would also want the applicant to satisfy the conditions for home occupation.

Jay Meyer asked if he thought this was one of those cases where it would be done in the home.

Mr. McConnell said that he did and he thought the issue was whether or not a family member would be living in the home, which he understood would be happening.

Jon Berry said if they comply with 5.2.1wouldn't they be able to carry on the home occupation as a matter of right and asked why they would have to satisfy the conditional use.

Mr. McConnell said he thought they would still have to demonstrate if it were one of the conditional uses so they would need to clear both hurdles.

Jay Meyer wanted to point out that home occupation was a conditional use in farm and forest anyways. Jon Berry also asked about the fact the Board had to consider the variance and conditional use together and wanted Mr. McConnell to elaborate on that using the full weight of the definition of a kennel, and

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asked if they could consider whether Ms. Simmons was going to erect hurricane gating on the other side of the property. He wanted to know if they could consider conditional use without the variance.

Mr. McConnell said he did not think so because he thought since there was a nonconforming structure for the use on the property it would require consideration of the variance standards as well.

Jon Berry wanted to clarify and said that Mr. McConnell was saying that in a conditional use application the applicant must assure the Board the structure on the premises was acceptable for the use being sought.

Mr. McConnell said it wouldn't be an issue; the issue was that there was a nonconforming structure.

Jon Berry said he was trying to not misconstrue what Mr. McConnell was saying.

Mr. McConnell said his issue was that the variance would be required because of the 50' setback requirement and the barn was 15' less. He said he did not think the variance could be separated from the conditional use.

Mr. Simmons said that he is a neighbor too and had similar concerns to those of his neighbors. He said he was willing to have a condition that there be no outdoor kennels. He said they weren't asking for a kennel, but the ordinance required it to be called a kennel. He argued that the kennel that would be run was unique and was only a kennel in name under the ordinance. He also said that if 9 pm was too late, they would be willing to make it a condition to be earlier than that. He argued that the current owners already make a lot of noise. The neighborhood would be improved in terms of noise.

Dennis Keeler asked if there would be any other dogs besides the 1 dog that Ms. Simmons would be housing separately that was previously discussed. He also asked if there would be breeding or selling. Mr. Simmons said that no there would not be any others being housed. They would stay for an hour and be gone.

Ms. Simmons said there would be no breeding or selling.

Jon Berry asked Mr. Simmons if they would be limiting it to 4 dogs.

Mr. Simmons said that his understanding was that anyone in Falmouth could have up to 4 dogs without question. He said they were not asking for a change in conditions for an extra allowance of dogs.

Jon Berry said that they wanted to have classes for up to 6 dogs.

Mr. Crawford said the ideal class size is no greater than 6.

Jon Berry wanted to know if they were including her dogs.

Mr. Crawford explained that the dogs owned by Jill Simmons are residential dogs. The home dogs are not dogs to be trained and therefore not counted in the number for the kennel.

Dennis Keeler asked Justin Brown if he had 5 cats would he be running a kennel.

Justin Brown said not unless he was housing them.

Dennis Keeler asked Ms. Simmons if there would be any other employees.

Ms. Simmons said that yes there would be one other lady working with her sometimes.

Dennis Keeler said to Ms. Simmons that her dad said he would be willing to restrict her hours and what she thought about that.

Ms. Simmons said that it would be okay to have a restriction of not having class at 9 pm and would have no classes later than 8 pm.

Jon Berry asked if there was a time constraint.

Mr. Crawford said yes they were running close to the drop-dead date.

Mr. Crawford said that the Simmons' wanted the Board to look at the conditional use separately from the variance.

Mr. Crawford said that he thought of them separately. They didn't know about the setback violation until late.

Jay Meyer said that since he saw two applications he thought it was reasonable to go through the two separately.

Jon Berry thought that a conditional use became necessary with the 2 extra dogs. They met the standard for farm and forest and should take in the opinion of the neighbors. He was not applying the conditional standard and the home application. He thought they should consider a condition to run exclusively with that endeavor and not with the land.

Jay Meyer asked Justin Brown his view on the carryover of a kennel on the land.

Justin Brown said typically it would run with the land, but he didn't think there was anything stopping them from putting conditions on the use.

Dennis Keeler wanted to assume for a moment that the barn was 60' away from the property line. In that situation he said he believed they had a kennel and it may not be the best definition, but one they were stuck with. A kennel is a conditional use. The only things that could be problematic would be noise and vehicular traffic. In the context of noise there were uses that would not make an applicant go before the Board and Dennis Keeler gave the example of an airstrip. He also did not think that the traffic increase was significant. He didn't have a problem with putting a condition on the application that would force a future applicant to appear in front of the Board. He continued to say that 9 pm was too late and would be more comfortable with something closer to 6pm.

Don Russell wished to echo the sentiments of Dennis Keeler.

Jay Meyer said that the traffic could probably cope. He felt that in terms of concerns from the neighbors, conditions could be placed to address those concerns by limiting the number of dogs on site and the hours of operation, as well as a condition on boarding. He agreed with Dennis Keeler and said 9 pm was too late. He wasn't sure if they could limit it to future use, but they could be specific about the use and the conditions to prevent future owners that would not be desired.

Dennis Keeler moved to approve conditional use under section 8.3 to establish a kennel with the following conditions: limited activity of training, which would not include boarding, breeding, and sale, limit the number of dogs not owned by the owner to 6 adult dogs i.e. greater than 1 year, hours of training not earlier than 9am or later than 6pm, and that this approval be limited to Jill Simmons, so that any change in ownership would require the applicant to come back to the Board for approval; Don Russell seconded.

Jon Berry questioned the definition of boarding because he didn't want to exclude the dog that Jill Simmons would take on for 8 weeks to assimilate.

Dennis Keeler said that he didn't intend to exclude that one dog.

Jon Berry suggested a conditional use that would allow for the boarding of one dog less than one year old. Jay Meyer said that they should allow one dog to be boarded without an age.

Jon Berry questioned the 6 pm condition because they also train the owner, so he would want to see a little bit later.

Don Russell said 8pm should be the cut off.

Jill Simmons explained that 5-8 pm was a crucial time because people were out of work.

Jay Meyer said that 8pm would work since not too many people would be in bed at 8pm.

Dennis Keeler asked if they would be allowing the boarding of one puppy on a commercial basis.

Jay Meyer said once they were allowing a kennel, it implied adult dogs so it would not matter but they could have a condition that would allow the boarding of only 1 dog regardless of age.

Jon Berry said that it would be permissible to train up to 6 dogs at one time. Age would not matter. Dennis Keeler withdrew and amended the motion to approve a conditional request to establish a kennel under section 8.3 with the following conditions: the use be limited to 6 dogs in addition to the personal dogs of Ms. Simmons, boarding be limited to 1 dog other than the personal dogs, hours of operations from 9am-8pm, uses otherwise limited to training other than the 1 boarding exception, and use limited to Jill Simmons with any change in the operation requiring the applicant to appear before the Board. Jay Meyer said Dennis Keeler said the boarding limited to 1, so he was wondering if the 1 was included in the 6.

Dennis Keeler said no because there would be training classes up to 6 with the 1 ongoing training. Jay Meyer asked if he was saying there would be 6 training dogs and 1 assimilating dog.

Dennis Keeler replied that that was how he was envisioning it. He would be willing to say 6 plus 1 in the assimilating program.

Dennis Keeler asked Ms. Simmons if there was a name that could be used to distinguish the 1 dog from the 6 others.

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Ms. Simmons said the Show Puppy Program.

Dennis Keeler amended to say 6 dogs in training, in addition to the 1 dog in the Show Puppy Program plus the personal dogs; Don Russell seconded.

Justin Brown went through the list to make sure everything was there stating: hours of operation 9am-8pm, limited to training, limited to Jill Simmons with any change of operation or owner would require approval.

Jay Meyer said that they also said with a limit to board one.

The motion carried 4-0.

Jay Meyer said that when approving a variance the Board would go through the standards of the undue hardship and vote on those separately. Also since the case was unusual a discussion may be in order. He continued to say that under his understanding the variance was needed because the barn was not nonconforming as is, but under use of a kennel it would require a larger setback which made it so that it did not fit the new requirement setback.

Dennis Keeler asked Justin Brown if the property were used as a kennel what would that mean all structures need to satisfy the 50' setback, even those that would not be used in the operation of the kennel. Justin Brown said he would not agree with that under his interpretation.

Dennis Keeler said that he envisioned the barn being in the field and a garage was there for cars, which was only 35' from the property line. He said he would be hard pressed to say they could not run the kennel because the garage was too close.

Justin Brown agreed with Dennis Keeler's point, but in the language he stated setbacks were that and structures must meet.

The two agreed that it was not very clear.

Jay Meyer said that to him common sense said no.

Justin Brown said he thought it depended on if the owners were using the property as a kennel, which got back to the poorly written definition of a kennel, stating that training can happen outside. If one took that literally, to him a section of the field where training was done could technically be part of the kennel, which would envelope the land as part of the kennel.

Dennis Keeler said it applied to structures.

Justin Brown said that he agreed and that went back to the fact that the ordinance was poorly written. Dennis Keeler said that they should talk about each of the categories since they could potentially run the kennel out in the field and not in the barn and therefore they would not need a variance, although running it in the barn would make it less obtrusive, resulting in the need for a variance.

Jay Meyer said it wasn't completely nonsensical because if the structure were used for that purpose, although it may contain the noise to a degree, it would still be too close to the line.

Don Russell said that for him that wouldn't be a deal breaker because it seemed a tremendous hardship to move the barn. For him it was completely unreasonable to move the barn.

Dennis Keeler said that the statute defined the hardship they were allowed to consider, which was pretty specific. He argued they had to look at those factors.

Dennis Keeler suggested they go through the text.

Jon Berry believed that it was not a mere matter of semantics because the Board talked to people night after night about 2 inches of overhang. He went on to say that he believed there was no other way to get around the variance. He said that he doesn't think that it rises to the level of undue hardship to have to move the barn.

Don Russell also suggested that the owners could cut off 15' of the barn.

Jon Berry said that Ms. Simmons' testimony that she was a rule-following, law-abiding citizen was most compelling for him. The variance asked for special treatment from the rules. Under the circumstances he said he didn't think that it fit.

Jay Meyer suggested for a proposal for a motion to approve or deny the variance and then go through the 4 parts of the criteria.

Dennis Keeler moved to deny the variance under section 8.4; Jon Berry seconded.

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Meyer said that one criterion for a variance was that the land could not yield a reasonable rate of return.

Dennis Keeler felt that it didn't meet that standard because the land could yield a reasonable rate.

Jay Meyer said that in that case he would vote no.

Dennis Keeler said that that was a very tough standard to meet because it was already a private residence, it had already been sold as one, and it will sell again as a private residence.

Don Russell thought it probably would yield a reasonable rate of return but to him it seemed nitpicky.

Jon Berry did not believe the standard had been met and agreed with the other two.

Jay Meyer agreed as well.

The Board opposed to that finding 4-0.

Jay Meyer said that alone would be enough to deny it, but for the record he thought they should go through the other 3 criteria.

Jay Meyer read that the need for a variance was due to the unique circumstances of the property and not the general conditions of the neighborhood. That vote would also need an affirmative finding that the standard was met.

Dennis Keeler said that he did not feel the property had unique circumstances. He gave the example of if all of the property was on a very steep slope, except for the area where they put the barn then that would be a unique circumstance. He said that there was a lot of area where the barn could have been put. Don Russell interjected that that would be a *fete de compli*.

Dennis Keeler said he understood but it was there not because of something unique about the property but because that was where the previous owner put it so he didn't think that standard was met either.

Jon Berry thought that went to Don Russell's earlier point that this was the general condition of the neighborhood because it was farm and forest so whoever decided that kennels ought to be 50' from the property line, and not the 35', which other uses could be setback on. He would argue that was the general conditions of the neighborhood. There was nothing unique except for the man who built it put it 35' instead of 50' away from the property line.

Jay Meyer said that he agreed because it was not the decision based on the property but based on the previous owner who put the barn there. Jay Meyer said that this was a tough decision.

Don Russell said that they were there to use the rule of reason and argued that all of this could just be done on a computer. He hated to see them emulate Washington.

The vote went 1-3 with three opposed. Jay Meyer was for it.

Jay Meyer read that the third criterion stated in an affirmative finding the variance will not affect the central character of the area.

Dennis Keeler said that he could get on board with that because moving the barn from 35' to 50' away from the property line would not seriously alter the neighborhood. He said they had met that standard. All four agreed and were in favor that it would not.

Jay Meyer read the last criterion that said for a finding that the hardship was not a result of action taken by the applicant or a prior owner.

Don Russell believed the previous owner had no prior knowledge of this. He added there was plenty of setback room for the other residences.

Jay Meyer said that he did take an action by putting the barn where it was.

Dennis Keeler said that was the end of the discussion because it was an action the owner took. He didn't know how to get passed that.

Jon Berry agreed and said if the prior owner had built it at 35' instead of 50' because it was the only place, that would at least be arguable.

Jay Meyer also agreed.

The vote went 1-3 in opposition. Russell did not believe that it was an action taken by the prior owner. All four were opposed to the variance.

The variance was not approved.

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**h. 60 Woods Rd, Falmouth Historical Society,** Conditional Use under Section 3.2/8.3 to expand a Private club to construct a barn. Parcel # R03-039-001, zoned FF.

Jay Meyer proposed to do the Falmouth Historical Society before Wal-Mart because it would be faster and Dennis Keeler could leave because he would need to recuse himself for Wal-Mart. Everyone was fine with the switch.

Rod Duckworth, President of the Falmouth Historical Society, told the Board that 18 Woods Road was where their museum was located and for the most part was a June to September operation. The FHS wanted to build a barn. This would be under farm and forest. They had a grant to build the barn. The barn was to be about 50-55' from the museum edge and was planned to be 24'x36'. The cost was unknown and ultimately they would have to go to planning.

Jay Meyer asked Justin Brown why they needed to be there if they have to go before the Planning Board. Justin Brown said that they need approval past 500 square feet for an accessory building. It was a change to their conditional use.

Mr. Duckworth said they had limited space for storage of artifacts and documents. The barn would mostly be for storage.

Justin Brown went on to explain that it was originally the BZA that put the condition on, so that was why the FHS had to come back before the BZA.

Dennis Keeler asked the size of the Barn.

Mr. Duckworth said it was 24'x36' and his colleague said that it was just less than 900 square feet. Public comment period opened; no public comment.

Jon Berry asked if this was exclusively for storage so there would be no need to alter parking.

Mr. Duckworth said that it would be. It was originally in the plan to do more, but that was no longer the case.

Don Russell moved to approve conditional use under sections 3.2/8.3 to expand the FHS to allow them to construct a barn; Dennis Keeler seconded. The motion carried 4-0.

i. **206 US RT 1, Wal-Mart-** Conditional Use under Section 3.6/8.3 for Outdoor sales and storage of equipment and material. Parcel U52-002, zoned SB1.

Dennis Keeler recused himself. There was also discussion as to whether or not Jon Berry should recuse himself. All parties did not mind if he remained on the Board.

Phil Saucier, with Bernstein Shore, represented Wal-Mart. The application was for a conditional use for outdoor sales and outdoor equipment on the side of the existing garden center. This would be a temporary expansion from 1 to 2 years. It would use the parking lot and be fenced in. They believed that it would improve safety there. The fencing would be temporary.

Steve Ribble, a landscape architect, said the ordinance required some screening or fencing and through discussions decided they wanted to be good neighbors so they would do both.

Don Russell asked if it would be locked up at night.

Mr. Ribble replied that it would be locked up but it's only a 4' fence. He said Wal-Mart has many cameras as well as a night watch person.

Mr. Saucier said that there will be a security person to watch over the site.

Mr. Ribble said they felt that it met all the safety concerns as well as those of the public.

Jay Meyer asked about the fencing noticing there was black picket fence and a vinyl coating chain link fence.

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Mr. Ribble said that there would be a vegetative screen along Clearwater Drive of evergreens and some shrubs. In front of the evergreens would be some other shrubs. Behind that there would be the vinyl picket fence. He said it would be an April to August operation since it would not be during the winter.

Jon Berry asked about the height of the trees that would serve as part of the barrier.

Mr. Ribble said they would be 6 to 8 feet tall and about 5 feet wide. The trees would be fairly dense.

Jon Berry asked where the chain link fence would be.

Mr. Ripple said that it would be in the front and the back.

Jon Berry then asked about the back L shape of fencing.

Mr. Ripple told him that it would be the chain link fence.

Jon Berry asked where the trucks would enter.

Aaron Shaw, the engineer, said that they would continue using the same route.

Jay Meyer asked about the corridor that appeared on one map but not the other.

Justin Brown asked about the date.

Mr. Ribble said that one of his maps had been changed and he did not have the right map.

Jay Meyer said that the Board could approve it with the surrounding fence with the condition that the Planning Board decided about the fence at the May meeting. He was worried about restricting the PB. Jon Berry suggested that they reference that things were satisfactory but did not want to bind the PB as well

Jay Meyer said they could be highly specific about the fences.

Jon Berry said he was much more interested in the green screening rather than the fencing. He said that he was not interested in binding the PB, but would rather give a testimony on their presentation regarding sufficient screening.

Don Russell moved to approve conditional use under section 3.6/8.3; Jon Berry seconded with the amendment that it was conditional and passed on for the Planning Board's consideration with reference to the testimony provided to the ZBA by the applicant.

Don Russell amended; Jon Berry seconded. Motion passed 3-0.

## 5. Other Business

Berry, Meyer, and Russell discussed changing the minutes from the previous month.

Jay Meyer submitted revisions.

#### 6. Adjourn

Meeting Adjourned at approximately 11:35pm.

Jon Berry moved to adjourn; Jay Meyer seconded. Motion passed 3-0.

Respectfully submitted,

Jon Planer Recording Secretary