TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, June 28, 2011

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

STAFF PRESENT – Justin Brown, Acting Code Enforcement Officer

1. **Call to Order**

The meeting was called to order at 7:32 pm.

2. **Discussion and adoption of the minutes of the previous hearing.**

Don Russell moved to approve the minutes; Stan Given seconded. Motion carried 4-0. Dennis Keeler abstained because he was not present at that meeting.

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

The Board determined that all applications were completed.
Jay Meyer said that the Rod and Gun Club had withdrawn.
Justin Brown said there wasn't a lot of detail behind it other than a withdrawal.

4. **Applications**

   a. **12 Hide A Way Ln. Tom Bannen-** Conditional Use under Section 6.2a for a dormer Parcel HL3-002, zoned FF.

Tom Bannen said they were currently renovating a house that was a camp. He said the roofline was low so a dormer would give more headroom and light so they could have some more room.

Public comment opened; no public comment.

Stan Given asked what the dormer would be for.

Mr. Bannen said for storage. It had a low ceiling.

Stan Given asked the size of the dormer.

Mr. Bannen 8'x8'. It wouldn't add to the footprint or any higher than the existing roofline.

Stan Given asked about the view from the picture.

Mr. Bannen said that he and his wife drove around and found a dormer they liked and photoshopped it onto their house to give the Board an idea of what it would look like.

Dennis Keeler asked if the dormer they were looking at was the only change to the house and asked if it went above the ridge of the roofline.

Mr. Bannen said that it was the only change to the house and it didn't go above the ridge.

Willie Audet asked if there was a scale to the diagram.

Mr. Bannen said it wasn't a scale drawing.

Willie Audet asked how he measured the setbacks. It looked like he had 29' on the front and 57' on the left side.

Mr. Bannen said he used a tape roll and it was surveyed about 4 years ago.

Jon Berry said it was helpful to get everyone's approval on the road.

Jay Meyer said it was also helpful. He wanted to confirm he wasn't changing the footprint and he was within the setbacks.

Mr. Bannen said that he was within the setbacks and that he wasn't changing the footprint.

Willie Audet made a motion to approve the conditional use; Stan Given seconded. Motion carried 5-0.

b. **90 A Ledgewood Dr. Jim Thibodeau-** Conditional Use under Section 6.7 to construct a Single Family Dwelling. Parcel U35-012, zoned Ram.

Jim Thibodeau recused himself. Jon Berry was appointed a voting member.

Jim Thibodeau had handouts, he had a mistake. He explained them.

Mr. Thibodeau said option A was for a three bedroom house and option B was for a four bedroom house. He handed out proof that the soils would sustain a septic system for both options. He said it wasn't a detailed design because he didn't have a buyer. He was marketing it as buildable lot and a three or four bedroom house. He said he had owned it for 13 years and was part of a larger parcel. He bought the lot from the bank after they foreclosed. Weather had hurt the building, and he saw it as unhealthy and called code enforcement. He wanted to tear the house down and got a building permit. At that time he was not required to come back to the ZBA for approval. Staff was not sure where he fit. Amanda Stearns, Community Development Director, said he didn't fit in any of the criteria for 6.7 or 6.9 in the Ordinance. He was looking to review both options, depending on market conditions and the buyer.

Public comment opened; no public comment.

Jon Berry said the application was thorough and given the unique posture, he would have disagreed slightly with staff's conclusions, only to the extent of having begun the process under the code, it wasn't

exactly grandfathered, but he would have been able to rebuild as a right, without having come to the ZBA.

Willie Audet wanted confirmation that option B was the four bedroom.

Mr. Thibodeau said it was. The footprints weren't much different because the master bedroom was above the garage. Also he said the plans for the building had not been inverted. He decided to change where the garage was because of where he wanted the driveway, so he had not yet flipped the plans to reflect the change. He was going to have to be back in front of Code Enforcement with another set of engineered drawings. That was the reason for the discrepancy.

Willie Audet said the only difference between A and B was essentially the number of bedrooms.

Mr. Thibodeau said that was correct. He said the house style was a little different.

Willie Audet asked if the Board was really interested in the style versus the footprint.

Stan Given asked if the views given were the general aesthetic.

Mr. Thibodeau said it would look a lot the plans shown. He continued that there might be some small modifications, but there wouldn't be any real drastic changes. It fit with the neighborhood.

Stan Given said that was all he was concerned with.

Willie Audet asked about the shared driveway access.

Mr. Thibodeau said his attorney had put together a maintenance agreement, which he had. It couldn't be recorded in the Registry of Deeds because the adjacent house was currently for sale and he didn't want to encumber that sale with a fresh change of right of way. Once the house sold they would file the agreement. Prior to that, there was never an agreement for a shared maintenance responsibility for that right of way. The fee interest was entirely owned by himself and his ex-wife. There was a well that provided water to both houses, nobody knew about that until the purchase. The well would be discontinued except by the 90 property for watering gardens, it now had public water for all other uses.

Willie Audet said that his ex-wife had signed an agreement, but in his words, he hadn't filed it because he didn't want to affect the sale of the other house.

Mr. Thibodeau said that was correct. They were fixing the right of way issue by sale of both properties.

Willie Audet asked if that affected the house on Ledgewood to right.

Mr. Thibodeau said it didn't. He said that guy didn't have an easement or any rights. He had just given him written permission to access across it only, which was recorded in the Registry of Deeds.

Dennis Keeler said, just to be clear, were they looking at the .35 acre.

Mr. Thibodeau said yes and showed him on the map.

Dennis Keeler said that property didn't have any road frontage.

Mr. Thibodeau said it didn't have it on Ledgewood Drive. It did on the sideline to the property where the driveway was. It had 133' of frontage. It was nonconforming because it didn't have adequate square footage and also because it didn't have the frontage. He asked Justin Brown if was 150'.

Justin Brown said he believed it was 125' and RAm had similar requirements.

Willie Audet asked if, Mr. Thibodeau's ex-wife, Gail Lajoie's lot was to be divided. He asked if someone were to buy it, would they get all four acres.

Mr. Thibodeau said it wouldn't be divided and that was correct although it was a little over five acres. He was deeded something a small piece of land off another lot, but it wasn't recorded until recently. The sliver back there on the map went with that piece. It was about an acre.

Willie Audet asked was that useless land.

Mr. Thibodeau said yeah and it could be divided if a private way was put it. He investigated it and found that it wasn't cost-effective.

Dennis Keeler wanted to understand the street frontage.

Justin Brown said it was in the RAm zone. He said it should mirror and the requirements should be the same as the RA district.

Dennis Keeler said lets assume that it was the RA requirements. He said that implied a street.

Jay Meyer said to be clear he was treating it as a lot that was grandfathered.

Dennis Keeler asked if that lot predated the street requirement.

Justin Brown said the only requirement that he looked at was for emergency vehicle access. He had an existing drive accessing the property. He would take the frontage off his drive, but as the rest of his application, it fell into a bit of a gray area. He would take it off the front of the driveway.

Mr. Thibodeau said the history of that was that parcel he called "Gail's parcel," He said that right of way used to be called Kansas Drive; it was part of the Pines subdivision. Kansas Drive went into the middle of that piece and tied in because Portland was on both sides of it. He said that was the edge of Falmouth right there.

Dennis Keeler said they had a grandfathered lot; they actually met the 125' of frontage.

Mr. Thibodeau said it was frontage because it fronted onto nothing.

Dennis Keeler said there was certainly enough linear distance there. It was nonconforming because it fronts on an old paper street.

Justin Brown said the lot had access on an existing drive and that hadn't changed since Mr. Thibodeau tore it down.

Mr. Thibodeau said it hadn't changed. When he bought the other parcel, the driveway was there and the other house was there. In their deed they had the right to just go across it. There was no maintenance agreement. It was a paper street.

Justin Brown said he looked at it as an additional nonconformity to the lot. He had had access to it and that's how he viewed it.

Dennis Keeler asked for the 3.5 acres, was that the easement he was referring to, giving him deeded access to Kansas Drive.

Mr. Thibodeau said he had his attorney already draw it up. It was a maintenance agreement in a refract easement for access to the 3.5. There would then be maintenance and rights of the two individuals. Once one sold, that would be recorded.

Dennis Keeler said, he and his wife as the owners of the dog leg on Kansas Drive had granted Mr. Thibodeau, as owner of the 3.5, a right of way over the maintenance and such.

Mr. Thibodeau said exactly and it benefited the other property more because it would have someone share the plowing cost.

Dennis Keeler asked if he was going to sell the 3.5 acres and then put in the record.

Mr. Thibodeau said if he had a purchase and sale agreement in his hands he would record it the next day. It was all done; the point was his attorney had advised him not to record it until such a time. If he had recorded it, the mortgage lien holder would want to get involved and he wanted to avoid attorneys.

Dennis Keeler said whoever buys it will know if it.

Mr. Thibodeau said absolutely.

Stan Given asked if the two drawings had changes made to the scale.

Mr. Thibodeau said the scale was correct.

Stan Given said Mr. Thibodeau had mentioned a neighbor and asked where he was.

Mr. Thibodeau showed him.

Stan Given he had two proposals and asked if they were to pick one or were they approving both.

Mr. Thibodeau said they were approving both.

Stan Given asked if there was no substantial change with either design.

Mr. Thibodeau said there were some slight differences but he was doing it because he owned that lot for a long time and now that his youngest son was 19 he could sell it. It was being marketed as a buildable lot or a lot that he would build for someone either a three or four bedroom, depending on what came along.

Stan Given said in some of the past cases, they had nailed them down to one specific footprint, otherwise it was left up to Justin Brown, which he was okay with, and didn't have a big problem with setback requirements. He just wanted to voice that because they had been down that road before.

Jay Meyer asked there was a house on it until 1997; he took it off, and wanted to figure out if there was clearer evidence of intent to maintain that use even though it was vacant for 14 years.

Mr. Thibodeau said yes, as a matter of fact, it had always been the plan it would be an investment property. It was written in his divorce decree that when it sold, the proceeds would go towards his son's education. He had that document. The only reason he tore the house down was because it was a menace, and at the time, the Ordinance didn't require him to go back before the ZBA. If it had, he would have done it and at the time he didn't know what he was going to do with it later on. It was always his intent to have it as an investment.

Jay Meyer asked Justin Brown if there was anything in the file that reflected that. He wanted to know if it was clear in the file that the intent was to rebuild there.

Justin Brown said the file was quite thin, other than the building permit, and a scribbled note, there was little reference to the demolition. Neither piece called out the intent to rebuild.

Jay Meyer said there was some point, if you got to 50 years, one would think it had been abandoned. On the other hand, if it was clear the intent was to rebuild, they were just getting around to, it looked like it was the intent. It looked like it was held in a development company.

Mr. Thibodeau said it was and gave the history. He said the bank had it for a year and then he picked it up and tore it down. He saved a small part to use as storage shed. Things were also disrupted because his son needed a bone marrow transplant. If one was to go through his and his wife's divorce decree, 12 years ago, it talked about it. He could prove it with the paperwork he had. He wasn't allowed then to do anything with it, until his son was 19 or out of high school.

Jay Meyer asked Justin Brown if he could think of any other cases where there was a long cessation of use and then a reestablishment of the use.

Justin Brown said not with one Board involvement or two language discussions commenting on the ability to have the agreement go with the land or something to that affect. He couldn't think of one similar to that.

Mr. Thibodeau said that Al Farris, former Code Enforcement Officer, wrote a letter about the language that was discussed and asked if it was included in the packet.

Justin Brown said that it was.

Mr. Thibodeau asked when the rule change came in to effect.

Justin Brown said 2006.

Mr. Thibodeau said at that point he wasn't even seriously contemplating it. He had things sent up, but it wasn't like the Town sent him a letter saying that changes had been made and he needed to come back before the ZBA.

Jay Meyer asked if it was in discussions with the Town.

Mr. Thibodeau said yes and he had paid his taxes every year as a buildable lot. He thought that was the intent in the discussions all the way through. He said if he wasn't allowed to rebuild there, he would have to have serious discussions with the Town and would ask how they could charge him for taxes as a buildable lot. To him, things were clear.

Justin Brown said he saw a note that that was written for Anne Gregory, Town Assessor, that Mr. Thibodeau intended to demo but couldn't do it before April 1. It sounded as though Paul Griesbach, also a former Code Officer, intended it to be a buildable lot for Assessment's purposes. It was March 1997.

Jay Meyer asked if that was reflected anywhere in the tax card or was it reflected in the value.

Justin Brown said he thought it was in the value and couldn't think of an instance where he would have seen it denoted separately.

Dennis Keeler said they had grappled with similar issues and said there was no timeframe under 6.9. They debated between 6.6 and 6.9. He was convinced after listening to the applicant that it was his intent all along to rebuild. There was no timeframe put in there, which would make him feel hard pressed to impose one. His only clarification in section 4.4, no dwelling shall be erected, except on a lot that fronts on a street. He said the right of way either constituted a street or it had been grandfathered. He didn't know enough about the history.

Justin Brown said if he had been looking at it as a fresh rebuild that day and was doing the entire process over, he would look at it as a grandfathered lot. It seemed clean to him. While it was part of the nonconformity, but he didn't know if it played into the fact that it had been over a decade.

Dennis Keeler said it went back to the old age Chapman subdivision, which he thought was in the early 1900s. He was prepared to make the leap that it was a grandfathered lot given the fact that it was an old subdivision that was now a paper street.

Jay Meyer said if it worked it worked as a nonconforming grandfathered lot. He said there was a point where they would think it had been too long, but they can see that intent could be proven.

Mr. Thibodeau said that was always the intent.

Jon Berry said if they were to look at it under 6.9, a relative timeframe wasn't 1997 to 2011, but 2006 when the change was made to 2011, which was really only five years. He thought they ran into some problems trying to hijack a timeframe or an expiration date, because they were only holding the applicant's feet to the fire on the second part of 6.9. In the first instance, they would have had to come before the ZBA before they even tore it down. Now they were trying to bootstrap the second part. He thought if they were going to be clean with it, if it was a grandfathered teardown and rebuild, than it was without the need for their approval. Since he got the permit under the old Ordinance to teardown under a

'may standard' and he may rebuild subject to issuance of a new building permit. He thought it was inconsistent for town government to say they were only going to read half of the requirements.

Jay Meyer agreed and said 6.9 was odd in that it didn't have a timeframe.

Jon Berry said if they went back and reviewed the Code as a whole, he thought the only fair interpretation in terms of grandfathered examples, if there had been a complete change of use.

Dennis Keeler said then they would be under 6.6 which was a discontinuance of a use.

Jon Berry said if that if they looked at the full and complete application of the Code, it would have an absurd result for a potential rebuild, if someone wanted to do that they would have to come year after year to get their building permits. He didn't think they were trying for that.

Dennis Keeler said he was comfortable with it and he wasn't sure what 2006 meant. He didn't know what 'may' meant. Even if he went back to 1997, he didn't have a timeframe there, and if they were to take away someone's right to build on a nonconforming lot, it must be clear. The discontinuance was clear, but there it was not. It was a valuable right and has one that the applicant had planned for all along.

Jay Meyer said to him it didn't make a big difference, option A and option B were both acceptable.

Dennis Keeler said they both satisfy requirements. The patio didn't cause a problem.

Willie Audet moved to approve the applicant for a conditional use under 6.7 and the approval consisted of options A and B; Stan Given seconded.

Dennis Keeler said that he thought the applicant was actually Leighton Farm Development.

Mr. Thibodeau said he was the applicant and he was the president of Leighton Farm.

Dennis Keeler asked who's name the title was in.

Mr. Thibodeau said it was under his name. He said the motion was under 6.7 and asked if he wanted to make it under 6.9

Willie Audet said he would amend his motion to reflect 6.9 as the approved under; Stan Given seconded. Motion carried 5-0.

Meeting adjourned.

Respectfully submitted,

Jon Planer

Recording secretary