TOWN OF FALMOUTH Board of Zoning Appeals Minutes Tuesday, August 23, 2011

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

MEMBERS ABSENT –Jim Thibodeau, Jonathan Berry (Associate)

STAFF PRESENT – Justin Brown, Acting Code Enforcement Officer

1. Call to order:

The meeting was called to order at 6:30 pm.

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

There were no minutes available to 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) **22 Providence Ave, Robert & Donata Nelson-** Conditional Use under Section 6.2 for an addition. Parcel U04-040, zoned RA.

Mike Hays, of Grant Hays Associates, explained that the Board previously approved a 6'x32' single story addition along the back side, and front and rear dormers on this property in March of this year. During the design process they discovered that more space was needed on the first and second floor. They are back before the Board to ask for approval for those additions. They have applied, and been approved, for a building permit. They are looking for approval of a new second floor full dormer addition on top of the previously approved single story addition as well as a 6'x12' two story addition attached to that. He distributed materials to the Board detailing their request. The proposal meets all required setbacks. The overall height will be 29 feet, which is within the allowed maximum. The proposed lot area coverage will be 29%; the maximum allowed is 50%.

Jay Meyer asked the property owner to confirm that Mr. Hays was authorized to speak on their behalf. Robert Nelson indicated his approval.

Public comment period opened.

Shelly D'Alberto of Providence Ave. had no problem with the single story addition. The house needed work. She felt this was a large house next to her much smaller house. She has lost part of her view. She didn't feel they were following the rules. She wondered what it means when the Board says that people build at their own risk. She asked the Board to deny this application.

Stan Given asked her to identify her property on the plan.

Ms. D'Alberto said she is on the garage side. She wondered when Mr. Nelson is going to have it surveyed.

Board of Zoning Appeals Minutes August 23, 2011 Page **2** of **10**

Don Russell asked if her real complaint was that this house is out of character.

Ms. D'Alberto said yes. She said other homes in the area have received approvals and are under construction. This house is huge and is out of character for the neighborhood. She didn't think the garage was going to be bigger and it is.

Dennis Keeler asked about her comment "build at your own risk".

Ms. D'Alberto said Justin Brown told her that was on the form, that they could build it at their own risk.

Jay Meyer explained that the Nelsons started construction, and a permit was actually issued, and then Justin Brown realized that it was different than what was actually approved by the Board. They were told that any construction was at their own risk.

Stan Given thought they were told to close it in for weather protection.

Justin Brown said at the state of tear down the Nelsons' were at, it was determined that they should secure it as it was. There was nothing they could do without going further into framing detail. It was determined that they could either move forward, at their own risk, until they reached the point that they could weather protect it, or they could stop and throw a tarp over it.

Mary Natale of Harding Ave. said that many of the neighbors have been before the Board in the past year, and there have been a lot of projects in the area that have conformed to the rules of Falmouth. This house is out of character for the neighborhood. She described the location of her house in relation to the applicants'.

Wade Morrison said he was before the Board last year to build their two-car garage. He removed a garage and breezeway, and built exactly what was approved. He thought there were a lot of building projects in the neighborhood, and a lot of neighbors are concerned about the size and expansion of this building. This used to be a pretty small home, and now it's large.

Rebecca James of Providence Ave asked Mr. Hays to review the plans.

Mr. Hays showed the plans and discussed the details of the proposed addition as well as the previously approved application.

Ms. James lives directly across the street and was concerned that the building site is a dump, with the trash and wood delivery. She didn't trust that what was being built was what was approved. She agreed that it didn't meet the character of the neighborhood.

Dennis Keeler asked what she can see from her house.

Ms. James said she can only see the front of the house. She would not see the new two story section on the back of the house from her home.

Willie Audet asked if she felt the dormers were out of character for the neighborhood.

Ms. James said that there are many other houses in the area that have second floor dormers, but it is a question of scale. What is unusual it that it has 4 dormers across the front; the amount and size of the dormers is much larger than any other house in the neighborhood. Further, the setbacks on this house are smaller than any of the other houses.

Willie Audet asked about the square footage of her home.

Ms. James wasn't sure.

Willie Audet thought her lot was comparable in size to this property.

A member of the public pointed out that the applicants recently put a dormer over the doorway.

Board of Zoning Appeals Minutes August 23, 2011 Page **3** of **10**

The Board asked Justin if that was on the approved plan. Upon review, the Board explained that they approved three front dormers on the main house, and one on the extension. The proposed plan showed the dormer mentioned. Stan Given wondered if that was expanding closer to the front lot line.

Mr. Hays said that canopy matches the footprint of the porch that was removed and rebuilt.

The Board reviewed whether the canopy extended into the front setback.

Willie Audet asked how they calculated their space needs for the home.

Mr. Hays explained that when they calculated their programming needs for the first and second floor, specifically bedrooms and bathrooms, it turned out the dormers and pitch of the roof were not going to give them the floor area inside necessary to meet what they felt was a standard bedroom size. The approach was to get appropriate sized bedrooms and bathrooms to make it marketable. There are also some significant structural issues; the existing framing is undersized and they want to bring it up to code.

Ed Cramp of Providence Drive said this has been a long process and he was concerned about the debris in the yard due to the construction. He felt the scope of the size of the property needs to be evaluated based on what was already there. He agreed that it was out of character of the neighborhood. Most of the homes are small ranches, 24'x30'. This house is 24'x32', with 12' along side.

Mr. Morrison thought the 30% rule applied to non-conforming lots. Jay Meyer clarified that the 30% rule only applies to the shoreland zone.

Mr. Cramp asked about the height restrictions; he and others present agreed that the garage is now taller than it was. Mr. Cramp said the home is now 29-30 feet tall where the other homes in the neighborhood are 16 feet high.

Public comment period closed.

Stan Given referred to the letter of July 18, in which Mr. Hays stated he contacted the code officer; he wondered when that meeting took place.

Mr. Hays said he contacted Codes on May 4.

Stan Given said the approval was granted in March; he asked if they went through the design phase after that.

Mr. Hays said yes; they identified the need for more space in that time. He told the Code office that he needed the second floor and asked what he should do; he was told to go ahead and draw up the new design and submit it, and if there was an issue it would come up during permitting.

Stan Given thought a substantial amount of new construction has occurred, based on the photos submitted by the neighbors. He thought the garage has been rebuilt from the ground up with a new foundation.

Mr. Hays said part of the foundation for the garage was block; some of that material had to be replaced.

Justin Brown said one wall had tipped out toward the abutting property. It was in very bad repair.

Stan Given asked if the new garage was in the same footprint as the former garage. Mr. Hays said it was

Justin Brown said that would be confirmed by surveyor.

Stan Given asked if there was any encroachment at all; from the photo it looks larger. He asked if the overall width of the house has changed. Mr. Hays said it had not.

Stan Given said the overall height had changed, and he asked what the change was.

Mr. Hays said the main house was roughly 3 feet higher; it went from 26 to 29 feet, in order to keep the 12/12 pitch of the roof. The garage had a saltbox roof on the back; part of the previous approval was to have a second floor dormer there. The increase was probably 3 feet, but he didn't know exactly.

Stan Given observed that the front canopy was not approved. Mr. Hays apologized; he thought that it was, because they were rebuilding the porch.

Stan Given said they only had 10.5 feet from the property line to the rake; he asked if that had been maintained and would remain. Mr. Hays said that it would.

Dennis Keeler asked about the height restriction in RA. Justin Brown confirmed that it is 35 feet.

Dennis Keeler confirmed the dormers that were approved in March. He didn't understand how the roof went up three feet. He asked if the entire roof was reframed.

Mr. Hays said that was correct.

Dennis Keeler asked what the Board was being asked to approve at this meeting. He thought they were adding a second floor to the one-story section.

Mr. Hays indicated on the plans what they were requesting.

Dennis Keeler and Mr. Hays discussed the pitch of the garage roof and the change from a saltbox to a dormer.

Willie Audet asked Mr. Hays if the distance from the front setback to the face of the building is 19.4'.

Mr. Hays said that was correct; that was the surveyed dimension.

Willie Audet asked about the stairs on the front; there was no structure over them on the approved plans. On the proposed plans there is a gable. He wondered about the distance from that to the front setback.

Mr. Hays said it was 15.4'.

Willie Audet said the Board would not be voting on that tonight, as it is not part of the application. He was not convinced that the house was out of character of the neighborhood; he felt the owner had the right to improve his property. It was not the Board's jurisdiction to oversee job sites; that is Justin Brown's job.

Justin Brown and the Board discussed whether the front steps had been attached to the building or not, and whether the canopy would be considered as expanding toward the lot line or not. Justin Brown said he did not know what had been there previously. Mr. Hays said there was a concrete stoop, black rails and steps. The pictures of the existing property show them.

Willie Audet asked for clarification that Mr. Hays was testifying that there was a concrete pad attached to the building, and extending beyond the front wall of the building.

Mr. Hays confirmed that statement.

Willie Audet said if they can establish that the steps were extending 4 feet then he was okay with squaring that off. However, that request isn't in the application.

Mr. Hays said if Justin Brown were to verify the size of the steps, they could make the canopy conform to that size.

Board of Zoning Appeals Minutes August 23, 2011 Page **5** of **10**

Jay Meyer said what they approved was dormers, not the roof going up three feet. He felt there had clearly been expansion of the volume of the garage. The second floor has been enlarged. The new rear shed dormer is shown as 10'6" feet from the line; the edge of the roof is 7'5".

Mr. Hays said the existing plan of the existing exterior wall has been maintained. That is the 7'5".

Jay Meyer asked if the roof was within 7'5" and whether they expanded the garage within that area. It wasn't just dormers, they added a second floor.

Mr. Hays said the wall was framed up, so yes.

Jay Meyer said they knew that the limit was 10 feet to the property line, since they showed the dormer at 10'6". What they didn't show was that they were raising the roof and expanding the second floor within that 7'5". He thought Mr. Hays should have known that they were not allowed to enlarge within 10 feet of the line. It was presented on the plan in March as dormers and an addition in back, and in fact they were substantially rebuilding the structure and raising it.

Mr. Hays agreed that the dormers and the new roof framing raise the ridgeline. He agreed with Jay Meyer that it was living space.

Justin Brown agreed with Jay Meyer about the increase in roof height; the plans that he has do not denote height, and they also do not denote any measurements. All he saw is replacement of the existing roof with architectural shingles; all other descriptions show the new dormer. He discussed with the applicant that the section within 10 feet of the property line would have to meet the exact original height and the setback. He confirmed that the ridge of the roof has been raised.

Jay Meyer asked if the dormer on the front of the garage was built at 10'6".

Mr. Hays said that it was. It was built to the proper setback. The exterior wall of the second floor of the garage lined up with the first floor wall, so there was already volume there. The net difference is the raising of the roof and the pie shaped space. The increase of volume produced by the dormer is within the setback.

The Board took up discussion of the application. Dennis Keeler was disturbed that this application was originally approved under 6.2, which doesn't allow any of the enlargement to be within the setback. Clearly some of the garage constitutes an enlargement within that setback. They didn't approve that; it would be a variance request. Jay Meyer felt that, other than that issue, it meets the requirements of 6.2.b.

Dennis Keeler asked what the procedure would be if the Code office went out and determined that what was being built was not in compliance.

Justin Brown said a stop work order and notice that correction would be required within a certain length of time would be issued. Correction of what was out of compliance could include removing it. Appeal to the Board for a variance would be an option as well.

Dennis Keeler thought it was possible the height change would have been approved anyway if it had been presented to them back in March. He thought the Board might only be able to vote on what is before them and allow Justin Brown to handle the land use violation. He asked if the application would have to come before the Board if they were only working on the main part of the house and did not have a setback issue.

Justin Brown said it would, since it is an enlargement of a non-conforming structure. It is this 2'6" section that is within 10 feet of the property line that is untouchable as far as expansion goes. If that were brought back down to the original pitch and had never been raised, it wouldn't be an issue.

Willie Audet asked if it would be okay if the roof was lowered.

Board of Zoning Appeals Minutes August 23, 2011 Page **6** of **10**

Justin Brown confirmed that statement. It is that 2 ½' section that is the problem.

Willie Audet said it is a major undertaking to reduce that, since it has already been framed.

Mr. Hays said it is that 2 ½' piece that is the issue. This is an issue that Justin Brown would have to discuss with Mr. Nelson. It isn't part of what they are asking for tonight.

Jay Meyer discussed the public comments tonight. They don't have any authority over the construction debris issue. He discussed the issue of the scale of the home and the height.

Mr. Hays said there are some large buildings in the neighborhood that have 30' ridge heights. Their intent was to keep the front of the house looking like a cape.

The Board discussed how to proceed with the application.

Dennis Keeler moved to approve the application, for purposes of discussion. Willie Audet seconded.

Dennis Keeler said he didn't believe there was any intent here; he thought it was a mistake. He thought the increase in volume and the enlargement of the 2 ½' piece is a violation of the ordinance, not approved in March and not consistent with 6.2.b. He didn't think the Board had the authority to act on the violation.

Willie Audet thought that, if Justin Brown took action on the violation, the applicant could appeal that decision and it would then come to the Board.

Dennis Keeler agreed. With regards to the front portico, he didn't see enough information in this application to determine whether it violates the front setback or not. He wasn't sure that was in front of them tonight.

Willie Audet didn't think it was in front of them tonight.

Justin Brown discussed the portico with Mr. Hays. Justin Brown thought an open-walled structure over an existing stoop was allowed, but it may require another 6.2 application before the Board.

Dennis Keeler asked the applicant to consider the comments around the construction debris, even thought the Board does not have jurisdiction over those issues. He wasn't prepared to say that this building was out of character of the neighborhood and he was reluctant to put limitations on it, in case those would limit someone else in the neighborhood later on.

Don Russell was appointed as a voting member.

Jay Meyer was concerned about approving it, where they have plans showing an enlargement within the 10 foot restriction.

Dennis Keeler thought they were voting on the addition in the back.

Jay Meyer suggested a motion to approve the addition as shown in the shaded areas of plan S-2 and A-5, to wit a 6'x32' second floor addition on top of a single story addition and a 6'x12' two-story addition.

Dennis Keeler added that this approval does not in any way imply approval of what's been built to date elsewhere on the structure.

Justin Brown asked if that approval encompasses the 29' ridge height as requested.

Dennis Keeler thought it did; they are very clearly not approving any enlargement within that 10 foot setback and any enlargement within the front setback.

Don Russell wondered if Willie Audet should recuse himself from voting on the application, since he is a friend of Mr. Nelson.

Board of Zoning Appeals Minutes August 23, 2011 Page **7** of **10**

Willie Audet said he has no financial interest in this application, nor has he ever had any business dealings with Mr. Nelson. He went to elementary school with him and grew up in the same neighborhood with him. His intention was to testify as to Mr. Nelson's character in light of the comments from the public.

Jay Meyer asked if Don Russell thought Willie Audet should recuse himself.

Don Russell said he thought he showed some bias.

Willie Audet didn't feel that he had any bias. Don Russell was satisfied with that.

Dennis Keeler restated his motion: he moved to approve the application under 6.2.b for an addition as shown on plan S-2, which is the proposed second-floor addition atop the approved 6x32 single floor addition, and a proposed 6x12 two-story addition. By so approving the Board does not by any implication approve any other construction that was done on the site, and whether or not it complies with the ordinance or prior approvals. Willie Audet seconded.

Dennis Keeler clarified that the second comment includes the front portico.

Motion carried 4-1 (Russell).

b) **20 Winslow Rd, Carol Payson** - Conditional Use under Section 6.2 for an addition. Parcel U02-033, zoned RA.

Steve Pondelis of Attardo Pondelis Architecture presented the application. Ms. Payson has lived in the building for 30 years, and her proposal is to add a bedroom/bathroom/laundry over the existing garage and entryway along with a 50 square foot addition that is not within the existing footprint of the house. A new sunroom is also being proposed within the existing footprint. There is no neighbor to the right of the home; the closest neighbor to the left is 44 feet away.

Public comment period opened; no public comment.

Dennis Keeler asked why the application is front of them; Justin Brown said it is non-conforming due to size, square footage and road frontage.

Willie Audet asked about a section of the property identified on the plans as zone A and E.

Mr. Pondelis said there is a conservation easement that runs through the gully between the houses.

Justin Brown said it is a potential flood zone area. It can still be counted toward the density calculations. He didn't think the home violates that in any way. That area is not depicted as a wetland and does not show up on any of the Town maps.

Mr. Pondelis thought it was as drainage area, and not a wetland. The red lines on the plans depict the limit on any building envelope on the property; they are not coming close to them.

Justin Brown said it is one of those cases where the building is almost conforming. It is very close to being within the building envelope, which limits their expansion.

Dennis Keeler observed that they are asking for 4 things: the 50 square foot addition, the 12x13 sun porch on an existing deck, the bed/bath over the garage.

Mr. Pondelis said they want to expand the deck, but the expansion is over an existing stone wall.

Dennis Keeler asked if it is expanding into the setback at all. Mr. Pondelis said it is matching the original setback on that side.

Dennis Keeler asked where the boundary is; he was confused by the conservation easement.

Jay Meyer asked if it was measured from toe of the slope.

Dennis Keeler was concerned about the corner of the deck. He said the stone wall does not establish a preexisting structure.

Willie Audet asked if it is attached to the foundation. Mr. Pondelis said it touches the foundation. It is supporting the edge of the deck now.

Justin Brown said if it is in support of the structure, it is a foundation.

Mr. Pondelis asked if they would be able to replace it with poured concrete.

Jay Meyer asked if it is mortared.

Ms. Payson said it is. It replaced a railroad tie. Her builder thought it would be a better idea to replace the stone wall with a poured foundation, in the exact place where the stone wall is, to support the proposed sun room.

Dennis Keeler said if it is part of the structure, they can go to it, and he didn't see why they couldn't replace it.

Justin Brown agreed, as long as it wasn't within 10 feet of the property line. Mr. Pondelis said it is not.

The Board discussed the easement property. Willie Audet confirmed with the applicant that she owns the easement property in fee. She owns all the property back to the land trust property.

Mr. Pondelis said that the proposed addition would be flush with the existing garage; they would not become any more non-conforming.

Willie Audet moved to approve the application under 6.2. Stan Given seconded.

Motion carried 5-0.

c) **13 Greenway Dr, Walter Fletcher -** Conditional Use under Section 6.2a to construct an addition. Parcel U01-205, zoned RA.

Carolyn Wollen, property owner, confirmed that Walter Fletcher had her permission to speak on her behalf.

Mr. Fletcher presented the application. They want to put an addition on an existing porch which strays into the setback by 7 inches. They want to move the decking and the addition 14 inches back so that it falls out of the setback. The deck now is on sona tubes; they want to install an insulated floor system and place it on sona tubes as well.

Stan Given asked how far from the property line the resulting structure will be. Mr. Fletcher said when it is done it will be 10'7" from the property line.

Stan Given said it is very close; he asked how they determined that. Mr. Fletcher said they had a survey.

Ms. Wollen said Ken Legasse of Saco did the survey.

The Board did not have a full survey plan.

Stan Given said it is very close, and it could be a problem if they didn't build it right. They are going at angles and it is very easy to be off.

Dennis Keeler stated that any structure has to be more than 10 feet away from the property line. That includes any overhang. He cautioned the applicant to be careful.

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

d) **6 Pine View Rd, R. Ian Parlin-**Conditional Use under Section 6.2 for an addition. Parcel U45-049, zoned RB.

Ian Parlin presented his application. This lot is non-conforming because the building is 7 feet from the side property line. He proposes to add a 10x16 deck, a 16x18 breezeway consisting of a roof but not walls connecting the house to the garage, and a 4x8 vestibule built on top of an existing wood-framed platform. That would be enclosed, but not heated, and would encroach into the front setback but remain on the existing platform.

Public comment period opened; no public comment.

Willie Audet asked what is underneath the wooden platform.

Mr. Parlin said it is built on sona tubes; it is attached to the building in some way, but he hasn't confirmed how. There are no supporting structures on the house side of the platform.

In response to Willie Audet's request, Justin Brown said his opinion is that it is a structure.

Stan Given thought the rear corner of the deck extends into the 20 foot setback.

Justin Brown said the original structure is already encroaching; in his opinion Mr. Parlin could have gone to the 10 foot mark.

Jay Meyer asked about the proposed roof overhang shown. He thought that would encroach.

Mr. Parlin agreed that by creating the overhang he would technically encroach further. There is no overhang on that side currently and there is a rot issue. He asked what overhang, if any, would be acceptable.

Jay Meyer said the ordinance was pretty clear that you can't go any closer.

Dennis Keeler said they had no authority to approve any overhang in this instance.

Mr. Parlin asked about a gutter. Justin Brown said that a gutter would be allowed, as it is removable.

Willie Audet moved to approve the application under 6.2 with the exception of the overhang of the garage on the north side. Stan Given seconded.

Motion carried 5-0.

e) **25 Lunt Rd, Emmanuel Kourinos-**Conditional Use under Section 6.2 for a deck. Parcel U24-014, zoned RA.

Jay Meyer recused himself, as he lives across the street from Mr. Kourinos' mother and is friendly with her.

Dennis Keeler served as chair for the application.

Mr. Kourinos presented his application. He put a foundation under his house in 2004. He removed the deck to replace the foundation, and put a new one on without realizing that he needed a permit to expand the existing deck. He had put a patio off the existing deck. He apologized for doing this process backwards. Research at the registry of deeds did not reveal clear property boundaries, and he has not had a survey done, due to the cost. He only has 90 feet of road frontage. He measured the house as best he could.

There were no members of the public present to comment.

Dennis Keeler asked if this is the deck as it was built. It is 27 feet away.

Board of Zoning Appeals Minutes August 23, 2011 Page **10** of **10**

Mr. Kourinos confirmed that.

Justin Brown confirmed that he meets the setback. This is technically a two family dwelling, and as such he is limited to 20 feet from the property line. At 27 feet he complies. He is also under on lot coverage for the district.

Willie Audet moved to approve the application under 6.2.c. Stan Given seconded. Motion carried 4-0.

5. Other Business

Discussion of recommendation on zoning issues for the Falmouth Economic Improvement Committee

Jay Meyer asked if any member of the Board has a suggestion for zoning changes, he would like to discuss them at the September meeting. He asked the members to send those suggestions to staff so that they can be disseminated to all the other members.

Jay Meyer discussed a list of suggested zoning changes that Amanda Stearns, Community Development Director, compiled from suggestions made in the past by Board members, both directly to staff and in discussions at Board meetings.

Dennis Keeler said there was an inconsistency in the nonconforming provision where an applicant loses their approval if the project isn't completed in a year, but with a tear down and rebuild, there is no time frame. He didn't advocate one over the other, but thought it was inconsistent. He also mentioned the attached structure vs. an unattached structure. He thought it was odd that someone could do in steps what they couldn't do upfront. He thought that was 6.2d. He thought if they were going to let applicant do it, they should just let them and not force them to come back twice.

Jay Meyer mentioned a recent application under 5.22.3 accessory apartments in which the applicant was confused regarding the definition of floor area located in 5.22.2b. He also said there was a problem with section 8.8, timing of appeals, regarding receipt of the notice of decision.

The Board discussed how the notices of decision are currently posted and said it should be clarified how that should be done.

Willie Audet mentioned the practical difficulty variance. That has been brought before the Council recently, but they did not take it on at the time.

Dennis Keeler mentioned complete applications, but he felt that was a procedure issue.

Willie Audet said an addition should be made to the definitions section that a sketch is a scaled drawing.

Dennis Keeler felt they had the power to determine what their process is. He mentioned rules of procedure, to let the public know what the process is ahead of time.

Adjourn

Meeting adjourned.

Respectfully submitted,

Melissa Tryon Recording Secretary