TOWN OF FALMOUTH Board of Zoning Appeals Minutes Tuesday, September 27, 2011

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

MEMBERS ABSENT – Dennis Keeler (Vice-Chair), Jim Thibodeau,

STAFF PRESENT – Amanda Stearns, Community Development Director

1. Call to order:

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

Jon Berry and Don Russell were appointed as voting members.

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

The Board made amendments to the July minutes. They will be brought back for review at the October meeting.

Willie Audet amended the August minutes.

Don Russell moved to approve the amended August minutes; Stan Given seconded. Motion carried 4-0 (Berry abstained, as he was not at that meeting).

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

The Board reviewed the applications and decided to proceed.

4. Applications

a) 45 Waites Landing Rd, Kathleen W. Porensky- Conditional Use under Section 6.2a for an addition. Parcel U05-021-C, zoned RC.

Steve Brann, representing the Porenskys, presented the application. The lot is nonconforming due to road frontage. They believe they have 150-152 feet of frontage along Waites Landing; 160 feet is required. He described the details of the addition. They have plenty of distance from other neighbors and have submitted letters from the neighbors in support of the application.

Public comment period opened; no public comment.

Jay Meyer said he had 5 letters of support signed by Dennis Sullivan, Lilly Hamill, Joseph Deloy, Susan Alexander, all of Waites Landing Road, and Eleanor Langlois of Elm Drive. The letters were entered into the record.

Jay Meyer asked about the distance from the side property line.

Mr. Porensky explained that the house is at an angle; the house is further from the property line in the front than in the back. The 30 feet is from the front corner of the house to the edge of the driveway.

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The property line is in the center of the shared drive, not at the edge. The addition will be 45 feet from the property line.

Stan Given moved to approve the application; Don Russell seconded.

Jon Berry thought this application exposed a need for a *de minimis* allowance under the ordinance. This application could have been approved by staff but for the lack of 8 feet of road frontage.

Motion carried 5-0.

b) 56 Pleasant Hill Rd, J. Kaplan/M. Welter - Conditional Use under Section 6.2a ,6.5 to rebuild a destroyed Single Family Dwelling. Parcel U33-014, zoned RA.

Fred Pannico of Planning Design Associates, representing the applicants, explained that the home suffered a serious fire this summer. Part of the house was within the side setback. The house was built in several different sections. One section was completely destroyed, and another had serious water damage. They plan to replace one section, while squaring the building off and adding a farmer's porch to the new portion. The original building was a cape and they plan to expand it upstairs. The living area of the home will be slightly larger.

Public comment period opened; no public comment.

Stan Given asked if there was any change in the number of bedrooms.

Mr. Pannico said there would be one additional bedroom. The septic is relatively new, and was designed for 3 bedrooms. There was one bedroom in the section that was destroyed. There will be 3 bedrooms total.

Stan Given observed that they are expanding up; he asked if it would be taller. Mr. Pannico said it will be 3-4 feet taller. The original was a half-cape; this will be a modern cape.

Jay Meyer asked if the septic will be checked when they come in for a building permit.

Amanda Stearns said yes, as well as the building height.

Stan Given moved to approve the application; Willie Audet seconded. Motion carried 5-0.

c) **206 US RT 1, Wal-Mart -** Conditional Use under Section 8.3 for signage. Parcel U52-002, zoned SB-1.

Kathy Kem of BRR Architecture presented the application. They are asking to alter and relocate the existing, non-conforming sign. The new sign is reduced in height, length and overall square footage from the existing sign. The new sign will be 152.48 square feet in total.

Public comment period opened; no public comment.

Don Russell asked if it is a different design in order to coordinate with the national chain. Phil Saucier of Bernstein Shur said yes, this is the new Wal-Mart logo.

Willie Audet asked if the proposed façade is shown on the plan. Ms. Kem said that was correct.

Jay Meyer said the Planning Board is reviewing the entire site plan.

Amanda Stearns confirmed that the Planning Board will review the entire sign plan. This is here solely due to Section 5.13.i.

Don Russell moved to approve the application; Willie Audet seconded. Motion carried 5-0.

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d) 183 Winn Rd, Paul Carey - Conditional Use under Section 5.22.1 AND 6.2a for an Accessory Dwelling Unit. Parcel U66-067, zoned FF.

Paul Carey presented his application. This is a one car addition to the existing two car garage. The area over the existing garage will be finished with two bedrooms, a bathroom and small rec room.

Jay Meyer asked if they are looking for approval to use the area indicated in red on the plans as an accessory dwelling. Mr. Carey said that was correct.

Public comment period opened:

Robert Stetson of Inverness Road was interested to learn about the rental of the apartment, as he has a mother in law apartment at his home across the street from this property.

Public comment period closed.

Willie Audet asked about the floor plan; the living area is on the second floor.

Mr. Carey said the living area would be over the existing two car garage; the addition to the first floor is for an additional garage bay.

Willie Audet asked if the addition of square footage for the garage counts toward the ratio for the size of the accessory unit.

Amanda Stearns pointed out that she didn't see a kitchen, and without one this isn't a dwelling.

Mr. Carey pointed out where there is a kitchenette near the stairway.

Amanda Stearns said the applicant technically needs to apply for and get approval for the expansion first. The calculations for the accessory dwelling don't work without the expansion. Since he could get approval for one and then come back and get the other approval, Justin Brown was treating this as a two-part application. She reviewed the updated calculations submitted by the applicant on September 15. This needs to meet the 30% or 1,050 sq. feet. He is adding 398 sq feet.

Willie Audet asked if they count the garage, since it is unfinished space. He thought they only count the finished floor area.

Amanda Stearns said that was correct. She did the calculation and came to 29.8%. He meets both the 35% and the 800 sq. feet standards.

Willie Audet addressed the neighbor's questions; the Board doesn't have say over how it is used. It could be rented as the owner saw fit, with no restrictions.

Jay Meyer said section 5.22.1 outlines the allowed uses for accessory dwellings.

Willie Audet moved to approve the application for an expansion under 6.2.a; Jon Berry seconded. Motion carried 5-0.

Willie Audet moved to approve the application for an accessory dwelling unit under 5.22; Jon Berry seconded. Motion carried 5-0.

e) 315 Pride Farm Rd, Start to Finish Remodeling Inc., representing Jeff & Andrea Robertson - Conditional Use under Section 6.11 to tear down and rebuild a Single Family Dwelling. Parcel HL6-019, zoned RBm.

Matt Piersol of Start to Finish Remodeling presented the application. Mr. Robertson bought the house in August. The home is nonconforming. They would like to tear this camp down and build another one. The new camp would be in the same footprint; the current camp does not have a basement and they want to put in a foundation and add two bedrooms and a bath. They've adjusted so that they are

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not expanding by more than 30% in either volume or floor space. The septic was installed in 1978 or thereabouts, and was designed for a 3 bedroom home. He presented calculations to the Board. The boundary survey they originally submitted did not show the water line; he has another one that does which he showed to the Board. They dug up the septic tank to show where it is. There are two wells on the property; one has been discontinued and the other is by the road.

Jay Meyer asked about the location of the water line on the plan.

Mr. Piersol showed the 100 foot setback shown on the plan. The building as it sits meets the setback boundaries, but is nonconforming due to the 100 foot shoreland setback.

Amanda Stearns pointed out that the Board will need to make a finding according to 6.11.b: "Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Board of Zoning Appeals..."

Public comment period opened; no public comment.

Don Russell felt the plot plan wasn't very clear.

Jay Meyer observed that the line is indicated in the legend as 100 feet from water line of lake.

Stan Given asked about the setback.

Mr. Piersol explained that there are two septic tanks that are within 8 feet of the home. The system is within 50 feet of the home. If they push it back, they will have to take down some huge trees. There is no place that they can put this home on this lot to make it conforming. The septic system is already a little bit on the association's land.

Willie Audet asked if they are building on the exact same footprint.

Mr. Piersol said yes; the additional living space will be on the ground level. The house is on 8x8 posts on a concrete pad; they will pour a foundation and put in a concrete floor. They will rework some of the grading to shed the water where it is supposed to go.

Stan Given asked if there will be a basement.

Mr. Piersol said half a basement; there will be a basement but they are only using half of it to meet the 30% limit. The first floor elevation will stay the same; they are raising the roof slightly, about 2 feet, and making it a full hip roof.

Stan Given asked about the trees that will keep them from moving the house.

Mr. Piersol said it was the septic system that would prevent them from moving it, both the tanks and the bed. They are shown on the plan. The corner of the tank is about 8 feet from the building. The system sits on a flat area, and then it drops off to the house. There is a pumping system in the tank.

Jay Meyer asked if the elevation of the first floor sill will be changed. Mr. Piersol said no, not at all.

Jay Meyer asked if the foundation would extend beyond the exterior walls. Mr. Piersol said no.

Jay Meyer asked about expansion in volume.

Mr. Piersol said the only expansion in volume is in the basement. The ceilings will actually be lower than in the existing building.

Willie Audet moved to approve the application under 6.11; Don Russell seconded. Motion carried 5-0.

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5. Other Business

Jay Meyer said the School Board has moved their meetings to Tuesday nights, and has suggested that the Zoning Board move their meetings to another night.

Amanda Stearns said it is a request; the Board is under no obligation to move the meeting.

Willie Audet, Jon Berry and Don Russell all said that Wednesdays and Thursdays were not an option for them.

Stan Given moved to reject the request; Don Russell seconded. Motion carried 5-0.

The Board discussed the issue of water views under section 8.3.e. Jon Berry, Don Russell and Jay Meyer have each submitted suggestions to deal with this issue. Jay Meyer observed that "no action" is an acceptable alternative.

Don Russell felt the term significant needs to be quantified in this instance. He is suggesting the Board's own internal standard and not an ordinance amendment.

Willie Audet felt it needed to be in the ordinance. He thought they should tell the Town Council that they need more direction.

Jon Berry said they are not in the position to question the wording of the ordinance. He felt clarifying the language would certainly help at least inform the applicants what they might face. He agreed that it needed to go to the Council.

Jay Meyer said it was the duty of the Board members to give weight to the testimony that they hear. They see neighbors "ganging up" on applicants in other areas, not just on this issue.

Stan Given agreed with Jon Berry and Willie Audet.

Jon Berry suggested a new addition to the definitions section of the ordinance. The language he is proposing is used by the law courts and the DEP. The language as it stands now is weighted toward the abutters.

Jay Meyer suggested a multi-factor test, and he reviewed the factors he suggested.

Amanda Stearns polled the Board on their position regarding simply repealing the July 2006 amendment that created this section.

Stan Given asked about the history of the amendment.

Amanda Stearns thought a particular Councilor at the time was approached around a project in which water views were being blocked. It came along at the same time as the 6.2a applications being brought to the Board.

Jon Berry thought that would be a great idea. If staff recommends repeal it can be presented to the Council in conjunction with the Board's alternative recommendations.

Jay Meyer wasn't a strong proponent of repeal, as he could see the use for the section, but repeal could be included as an option for the Council.

The Board talked about the alternate provisions that exist in the ordinance to prevent people from building huge homes -30% expansion limit, height restrictions, character of neighborhood, etc.

Jon Berry moved to endorse the staff recommendation to repeal, in addition to presentation of the Board's three alternative recommendations as previously submitted for the Council's consideration if repeal is not an option. Stan Given seconded.

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A letter had been drafted previously, and will be edited. The Board expressed their support of Jay Meyer finalizing the letter and sending it to the Council.

Jay Meyer expressed his reservations about repeal; he did agree that it needs to be clarified.

Jon Berry felt staff's recommendation to repeal was based solely on the opinion that it is difficult to administer, and not a judgment on whether it is good policy. In its current form, it causes too much of a problem.

Amanda Stearns clarified that repealing the July 2006 amendment would also move all 6.2.a applications back to the Code Officer.

Jay Meyer said all the Board is recommending right now is the repeal of 8.3.e.

Motion carried 5-0.

Adjourn

Meeting adjourned at 8:45 pm.

Respectfully submitted,

Melissa Tryon Recording Secretary