-TOWN OF FALMOUTH Board of Zoning Appeals DRAFT Minutes Tuesday, October 25, 2011

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

MEMBERS ABSENT -

Dennis Keeler (Vice-Chair) arrived late.

STAFF PRESENT – Justin Brown, Code Enforcement Officer

1. Call to order:

The meeting was called to order at 6:31 pm.

Jon Berry and Don Russell were appointed as voting members in Dennis Keeler's absence.

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

July minutes: Stan Given moved to approve the amended minutes; Don Russell seconded. Motion carried 4-0. (Audet, Thibodeau abstained)

September minutes: Willie Audet moved to approve the amended minutes; Stan Given seconded. Motion carried 5-0. (Thibodeau abstained)

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

The Board did not find any applications incomplete.

4. Applications

a) 360 Woodville Rd, Hardy Pond Construction representing Jean Waite - Conditional Use under Section 6.2a for an addition. Parcel U66-065, zoned FF.

Jonathan Berry was a voting member for this item.

Bob Goodrow of Hardy Pond Construction explained that the lot is non-conforming due to the front setback and lot width. The house is at 24 feet back instead of 25, and the street frontage is 200 feet instead of the required 250 feet. The plan is for two additions, one on either side of the house. This is one of the oldest houses in Falmouth. They want to create better utilized living areas on the first floor.

Public comment period opened.

Johan and Linda Gouws are abutting neighbors and said they have no problems with the plans.

Public comment period closed.

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Jim Thibodeau asked about the side yard setback. Mr. Goodrow said it is 66 feet back on one side, and the other side is 150 feet back.

Jim Thibodeau asked about the setback in that zone. Justin Brown said it was 20 feet.

Willie Audet asked if there are 4 existing bedrooms; that is what is shown on the tax card.

Mr. Goodrow said maybe at one time there were, but Ms. Waite is the only resident now. The septic is brand new and sized for 4 bedrooms.

Jay Meyer asked about the distance from the sunroom to the rear line. Mr. Goodrow said it was 90-100 feet. It is in excess of the 40 foot setback.

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

b) 60 Underwood Rd, Constance Hallett - Conditional Use under Section 6.2a for an addition. Parcel U19-065, zoned RA.

Don Russell was a voting member for this item.

Jay Scaler, representing the applicant, said they are putting an 18x20 family room on the existing building. They are changing the lot usage from 4 to 6% and are well within all the setbacks. It is an almost 18,000 sf lot.

Public comment period opened; no public comment.

Willie Audet commended Mr. Scaler on a good scaled drawing in the application.

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

c) 33 Hamlin Rd, Robert Pietroski - Conditional Use under Section 5.21 for a Home Occupation. Parcel U47-016, zoned RB.

Jon Berry was a voting member for this item.

Bob Pietroski presented his application. He is applying for a home occupation. He would have one admin person that would work with him part time. He currently has an office outside his home, but wants to have this approved so he has somewhere to go if he loses the lease on his current office.

Public comment period opened; no public comment.

Jay Meyer asked if there would be any signs; Mr. Pietroski said no.

Jay Meyer asked if there would be any visitors; Mr. Pietroski said no, if he has a client he visits them.

Jay Meyer asked about parking for the employee; Mr. Pietroski said he has room for 4 cars in the driveway and a 2 car garage.

Jay Meyer asked Justin Brown if he had any problem with the calculation of 18.5%. Justin Brown said no.

Jim Thibodeau moved to approve the application under section 5.21; Willie Audet seconded. Motion carried 5-0.

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d) Winn Rd, Archie Giobbi - requests a variance for lot reduction under Section 8.4, Parcel R03-005-L, zoned FF.

Don Russell was a voting member for this item.

Willie Audet disclosed that Mr. Giobbi is affiliated with his real estate agency. He felt he was able to sit and hear the application.

Jay Meyer asked if Willie Audet had any fiduciary interest in the lot.

Willie Audet said no; the lot is not in their inventory. Mr. Giobbi has stated that he plans for the lot to be his retirement lot.

This item was continued at the end of the meeting.

e) 338 Foreside Rd, Peter Thornton - Administrative Appeal of a decision of the Code Enforcement Officer regarding a lot split. Parcel U18-004-A, zoned RA.

Peter Thornton asked the Board to reverse a decision made by the Code Enforcement Officer regarding a lot split on an abutting property.

Jay Meyer pointed out that appeals are governed by section 8.8. Section 8.8b states that the Board must first determine whether to hear the appeal: *The Board shall initially review any appeal filed to determine whether to entertain the appeal. The Board may refuse to entertain an appeal if it is clearly frivolous or improperly filed, or for other sufficient reason fails to present an appealable issue...*" Jay Meyer proposed that, before hearing the merits of the appeal, they determine whether it has been properly filed. There is a question as to the timeliness of the appeal.

Jon Berry disclosed that he discussed the matter with Mr. Thornton in his professional capacity earlier this summer, and therefore recused himself.

Don Russell was appointed as a voting member for the item.

Willie Audet asked Justin Brown if Hedgerow Drive is a subdivision.

Justin Brown couldn't say for sure but he didn't think so.

Willie Audet thought that, if it is a recorded subdivision, the owners should have gone to the Planning Board to split the lots.

Mr. Thornton said that it was a recorded subdivision. It was recorded twice. Mr. Walker built the first half of Hedgerow Drive; 15-20 years later he built the rest of the street as a second subdivision. He provided copies of the subdivision plan that he got from the Registry of Deeds to the Board.

Jay Meyer asked if it would be appropriate to table this item until the subdivision question could be answered.

Justin Brown said yes; he could confer with the Planning office regarding that issue.

Jay Meyer asked about the current status of the lot. Justin Brown said that it has been split, but not yet been sold.

Mr. Thornton thought it was in pending status, but they haven't closed on it.

Jay Meyer stated that the approval of the lot split was in July of 2010. Mr. Thornton confirmed that.

Jay Meyer asked if he had any notice of that approval at that time. Mr. Thornton said no; the only time he found out about it was when the "for sale" sign went up. He didn't know when that went up, but he said he appealed within 30 days of when that went up.

Jay Meyer asked if he received any emails from any town staff about the approval. Mr. Thornton said no; he might have stopped in the Town Hall to question it after he saw the sign but he didn't know when that was. He said it was listed for sale on July 12, 2011. He didn't know when they put the sign up. He went to the Town after he saw the sign.

Jay Meyer asked when he actually filed the appeal. The application is dated September 16, 2011.

Justin Brown said the appeal paperwork itself was received in the office on October 3, 2011.

Jay Meyer asked if Justin Brown had any record of written notice to the Thorntons prior to July.

Justin Brown said he had an email from Amanda Stearns, Community Development Director, on April 13, 2011 to Mr. Thornton, which stated that the decision had been made, and that they could meet if further discussion was required. Mr. Thornton replied in email on that same date that he wanted further discussion. Justin Brown passed around those documents for the Board to review.

Jay Meyer asked Mr. Thornton if he remembered this exchange. Mr. Thornton said he did.

Jay Meyer asked if that was notice of the Town's decision in his view. Mr. Thornton said no; he thought they were just going back and forth. He wasn't sure what they were going to do with it.

Jay Meyer asked if he had an understanding at that time whether or not approval had been given for the split. Mr. Thornton said no, because no notice had been sent to him. He argued that if they had gone through the Planning Board for a lot split he would have been notified and attended the meeting.

Jay Meyer asked him whether this email was notice from the Town of the approval or not, in his opinion. Mr. Thornton said it was not.

Jay Meyer asked if there were any further written communications between Amanda Stearns and/or Justin Brown and Mr. Thornton

Justin Brown said on August 3, 2011 Mr. Thornton came into the office to ask about the appeal process. Justin Brown sent him an email containing section 8.8 in its entirety.

Willie Audet referenced an email from Amanda Stearns to Mr. Thornton on August 13 saying that Justin Brown had said a lot split would be permitted under certain conditions. He asked what the conditions were.

Justin Brown said an email dated July 15, 2011 listed the conditions: the lot abutting both Falmouth Rd and Hedgerow would need to change to a Hedgerow address; the submission of net residential area calculations; submission of deed information for the lot; and that the shed that appeared to be within 40 feet of the rear setback either be brought into conformance or removed.

Willie Audet said the plan done by Titcomb and Associates references the plan of 1958. He thought the split should have gone to the Planning Board.

Jay Meyer referenced the email of August 3, 2011 from Justin Brown detailing the procedures for an appeal of the lot split. He asked if Mr. Thornton considered that notice of the approval of the lot split.

Mr. Thornton said no, he didn't. He didn't have notice of the lot split.

Jay Meyer asked when Mr. Thornton filed his appeal; the application is dated September 16, but stamped as received by the Town office as October 3.

Mr. Thornton confirmed that he submitted the application on October 3.

Jay Meyer asked Justin Brown if there were any other emails after August 3 about the lot split.

Justin Brown said no, he thought that was the last email.

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Jay Meyer thought there was a question of timeliness, but the issue is what constitutes a written notice. He asked the Board how they wanted to proceed.

Don Russell supported tabling the item and researching the subdivision question.

Jim Thibodeau wanted a legal opinion on what constitutes a written decision. He didn't think email counted.

Stan Given agreed with tabling the item.

Jay Meyer asked if there was any posting of approval on the lot itself.

Justin Brown said there is very little way to notice people of a decision in lot splits. There is nothing to put out on the lot.

Jay Meyer asked Justin Brown to get Bill Plouffe's opinion on what constitutes written notice.

Jon Berry, as a member of the public, suggested they ask the Town Attorney for a determination on an erroneous decision vs. an invalid decision. If the decision was invalid because it was not within Justin Brown's authority there would have to be some remedy. State statute is clear that if you want to amend a recorded subdivision plan you must return to the Planning Board.

Stan Given moved to table the application; Jim Thibodeau seconded. Motion carried 5-0.

Winn Rd, Archie Giobbi - requests a variance for lot reduction under Section 8.4, Parcel R03-005-L, zoned FF.

Dennis Keeler arrived at the meeting.

Archie Giobbi said he was withdrawing his application. He explained that the lot was part of a 3 lot illegal subdivision. Once they got the notice from the CEO they appealed the decision and came to the Board in January 2009. The Board denied that appeal. 2 weeks later he was notified that the lot would have to be approved by the Planning Board. He consulted with his attorney this afternoon who advised him to follow the letter of the law and go to the Planning Board. He has decided to do that.

5. Other Business

Jay Meyer said at the Council's recent meeting, the issue of section 8.3 was referred to the Council's Community Development Committee for review.

Adjourn

Meeting adjourned at 7:40 pm.

Respectfully submitted,

Melissa Tryon Recording Secretary