



Town of Falmouth Community Development Department  
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**Board of Zoning Appeals  
Tuesday November 27, 2012 6:30PM Minutes  
Falmouth Town Hall**

**MEMBERS PRESENT** – Jay Meyer, Stan Given, Willie Audet, Dennis Keeler, Rudy Israel (Associate) and Don Russell (Associate)

**MEMBERS ABSENT** –Jonathan Berry

**STAFF PRESENT** – Justin Brown, Code Enforcement Officer

1. **Call to order:** The meeting was called to order at 6:31 pm by Chairman Jay Meyer.
2. Discussion and adoption of the minutes of previous hearings was tabled until the end of the meeting.
3. **Discussion and finding that all applications presented for this hearing are complete.**

It was determined by the board that all applications were substantially complete and ready to begin the review process.

**4. Applications**

- a. **206 US RT 1. Wal-Mart** – Requesting Conditional Use under Section 8.3 to alter and relocate a sign. Parcel U52-002, zoned SB.

Mr. Keeler recused himself from the consideration and action of this application.

The applicant's attorney Phil Saucier from Bernstein Shur was present on behalf of Wal-Mart and gave an overview of the proposal. He presented elevations depicting the proposed signs and noted that one sign had been removed from the plan so there is less signage on the façade. The applicant is asking for essentially the same approval they were granted a year ago. The new corporate design that has been approved by the Planning Board is incorporated into the proposal. Nothing has changed in terms of the criteria the board must consider. They have simply re-submitted the responses to each criteria for the current application submission.

No one was present from the public to speak to this application.

Board comments and questions included

- Outdoor living sign implications
- Market and pharmacy sign status
- Planning Board approval extension status

**Motion:** Mr. Israel made a motion to approve the application under 8.1.3. Seconded by Mr. Russell

**Vote:** Yea – Unanimous. (Mr. Israel and Mr. Russell both voting as alternates and Mr. Keeler recused)

b. **31 Harding Ave. Richard E. Weare** -Requests a Hearing under Section 8.2.1. for a mislocated dwelling. Parcel U04-003, zoned RA.

Richard Weare present and gave an overview of the proposal. He bought the parcel when the street was a dead end and the town was involved in the splitting of the lot by that developer. The street was to be extended to those lots. The town took the neighbors front yard to create a vehicle turn around. As a result of the neighbor having a survey done in conjunction with the town Mr. Weare's property was identified as having a site plan setback violation and thus he is before the BZA for clean up of the issue. A reduction of the side yard setback is requested.

No one from the public was present to speak to this application.

Board discussion included:

- Does the board have an obligation to inspect the property for setbacks as a procedural step?
- Status of sliver of land – is the Town conveying that out?
- Current neighbors on the corner of the property where the house is in violation of the setback.

**Motion:** Mr. Audet made a motion to approve the application as presented. The motion was seconded by Mr. Russell.

**Vote:** Yea – Unanimous. (Mr. Russell voting as alternate)

**Motion:** Mr. Audet made a motion that the board recommend to the Town Council that no penalty be pursued due to undue circumstances. Mr. Russell seconded the motion.

**Vote:** Yea – Unanimous.

c. **54 Pleasant Hill Rd. Dr. Susan Speckhart**-Requesting Conditional Use under Section 6.5 for the replacement of a garage. Parcel U33-013, zoned RA.

Ms. Speckhart was present. She has new information regarding her septic tank that she obtained since the last meeting. A letter from a contractor was submitted stating that the existing foundation cannot be salvaged. An updated site plan by Owen Haskell was submitted for review.

**Public Input:** No one was present from the public to speak to this item.

Board comments and questions included

- Clarification of prior approval.

- Field verification of septic tank location caused the previous planned location for the new garage to change.
- Differences between the old plan and the new plan
- Applicant was advised by a professional not to relocate the septic. There is ledge on the site and a pump may be required in a new location.
- Section 6.5 is the correct provision under which the application should be reviewed.
- Footprint of the garage has not changed. Some changes came about because the builder told her she cannot build within 5' of the septic.
- 6.5.a.1 talks about damaged structures being replaced – Mr. Audet compared the current proposal against this provision.
- Should the board decrease setbacks from the original approval – is it possible for the applicant to do the project under those conditions?
- Is old garage still in place?
- The Kaplan's have submitted an updated letter in response to the project – they endorse the application as an abutter.
- This is the 3<sup>rd</sup> time the project has come to the Board of Zoning Appeals. The septic tank location should have been obtained prior to this point. Burden of proof is on applicant and the setback must be met to the greatest extent practical.
- The square footage proposed is less than the original approved square footage.
- Width includes roof overhangs.
- Locating footings by Haskell as a condition of approval.

The applicant asked the board to consider the purpose of the board's review which is to protect the public interest and property rights.

**Motion:** Mr. Keeler made a motion to approve the application to rebuild the garage as submitted with the condition that 1) the structure is located as close as possible to the septic tank 2) foundation and elevation plans are submitted to the CEO with more specificity that it is per approval 3) prior to construction corners of the foundation are pinned in the field and verified by staff. The motion was seconded by Mr. Israel.

**Vote:** 3 Yea - Mr. Audet opposed. (Mr. Israel voting as alternate) The motion carried.

d. **41 Applegate Ln. Jean & Sandy LaBelle-** Requesting Condition Use under Section 6.2 for a sunroom addition. Parcel U16-002-034, zoned RA.

Chris Atshed was present on behalf of the applicant to get approval to build the sunroom. He is the contractor and the applicant is in Florida this evening.

**Public Input:** No one was present from the public to speak to this item.

Board comments and questions included

- The project is placed over an existing concrete footprint but not replacing an existing structure

- Not expanding the size of the concrete pad on the ground. It will be exact dimensions as existing concrete patio.
- 6.2.b in Mr. Brown's notes but should be c as this is a multiplex use.

**Motion:** Mr. Russell made a motion to approve the application as presented. The motion was seconded by Mr. Given.

**Vote:** Yea – Unanimous. (Mr. Russell voting as alternate)

## 5. Other Business

Minutes:

### May 22, 2012

**Motion:** Mr. Given made a motion to approve the minutes of May 22, 2012 with minor changes. Mr. Keeler seconded the motion.

**Vote:** Yea – Unanimous. Mr. Audet abstained as he was absent from that meeting.

### June 26, 2012

**Motion:** Mr. Given made a motion for approval of the June 26, 2012 minutes with minor changes. Mr. Audet seconded the motion.

**Vote:** Yea – Unanimous.

### July 24, 2012

**Motion:** Mr. Keeler made a motion for approval of the July 24, 2012 minutes with minor changes. Mr. Given seconded the motion.

**Vote:** Yea – Unanimous.

### August 28, 2012

**Motion:** Mr. Given made a motion for approval of the August 28, 2012 minutes with minor changes. Mr. Israel seconded the motion.

**Vote:** Yea – Unanimous.

The December meeting schedule was discussed. The regular meeting would fall on Christmas and it was decided the board would not meet in December. The next regular meeting will be January 22, 2013.

Mr. Meyer noted that he will not be chair in 2013 unless no one else would like to in which case he would be happy to do so. He will need to miss a series of meetings in the April time

frame. He asked members to think about their desire to serve or to nominate someone else as chair. This will be Mr. Meyer's last year in his term.

Discussion ensued as to the status of other board members term expiration dates.

## 6. **Adjournment**

The meeting adjourned at 8:01 PM.

Respectfully submitted,

Dawn Emerson  
Recording Secretary

*\*Please note that this is not a verbatim accounting of the meeting. An inclusive digital video file of the meeting can be accessed on the Town of Falmouth website.*