



Town of Falmouth Community Development Department  
271 Falmouth Road  
Falmouth, ME 04105  
☎ 207.781.5253

**Board of Zoning Appeals  
Tuesday January 22, 2013 6:30PM Minutes  
Falmouth Town Hall**

**MEMBERS PRESENT** – Jay Meyer, Stan Given, Willie Audet, Dennis Keeler, Jonathan Berry, Rudy Israel (Associate) and Roland Beaudoin (Associate).

**MEMBERS ABSENT** – All members present.

**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. Mr. Meyer noted the presence of Roland Beaudoin, new associate member replacing Don Russell. He also noted that Mr. Israel will be stepping down to serve on the Planning Board and an additional BZA member will be appointed.
2. **Minutes:** Discussion and adoption of the November and October minutes was tabled until the February meeting. Mr. Meyer noted that he did not receive the minutes via email and would like his email address updated in the town records.
3. **Discussion and finding that all applications presented for this hearing are complete:** It was determined that the Ghiorse application was missing some materials. The applicant was not present. They had been advised by Mr. Brown to request a continuance and submit missing materials. An assumption was made that this is the intention of the applicant.

Motion: Mr. Keeler made a motion to continue the application to the February meeting. Mr. Given seconded the motion.

Vote: Yea - unanimous (no alternates voting.)

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

**4. Applications**

- a. **7 Wright Way. Nathan Edwards** – Requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling. Parcel U28-016-001, zoned RB.

Mr. Audet recused himself and sat in the audience as he is a neighbor to the subject property.

Nathan Edwards was present. He outlined his proposed project to create an accessory dwelling unit in an existing residence. The current structure is a four bedroom home about 3500 square feet. The purpose of the application is to finish ½ of an existing basement for an

accessory apartment for elderly family members. The unit plan shows a separate entrance. Access to the house from the unit internally will be provided by a door. The additional built out area is 660 square feet. This increases livable square footage of the structure by 21% which meets ordinance requirements.

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

Board comments and questions included:

- Location of the primary entrance to the home.
- No increase in the number of bedrooms. The implications of this on the septic system design and permitting. Mr. Brown confirmed that the state mandates the septic requirements.
- Adequate provision of egress to unit.
- All expansion is within existing envelope of the building. No expansion of the footprint.
- Other ½ of basement is to be insulated and used as a play area for the kids. Stairwell goes up into the main part of the house.
- Which way house faces - entrance must appear as part of character of single family home.
- Implications of a requirement that the septic design to be recorded at registry of deeds. Would a title search put a buyer on notice of the restriction?

Motion: Mr. Keeler made a motion to approve the application subject to septic system analysis and state permitting. The motion was seconded by Mr. Given.

Vote: Yea – Unanimous. (Mr. Audet recused and Mr. Israel voting as alternate)

- b. **28 Falmouth Rd. John T. Peelen Jr.**-Requesting Conditional Use under Section 5.21 for a Home Occupation. Parcel U25-016, zoned RB.

John Peelen was present. He is requesting to run a home business consisting of culinary classes and recipe tasting. The business will use the kitchen exclusively. There are no employees beside Mr. Peelen. There could be up to 4-5 customers working in the kitchen space at one time. Parking exists on the property.

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

Board discussion included:

- Adequate onsite parking available for 5 cars plus Mr. Peeler.
- Restricted to kitchen area. This is only 10% of allowance and should not be of issue.
- Number of classes? Hopefully once a week. More is desired.
- When there is a class there will be a sign erected. Can have a sign under 5.1.3.a under current ordinance.
- Was an approved law office in 2004 and became an accessory dwelling unit in 2012.
- There is parking for 1 vehicle in the barn

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

**Vote:** Yea – Unanimous.

- c. **410 Middle Rd. Aaron Amirault-** Requesting Conditional Use under Section 5.21 for a Home Occupation. Parcel R01-037, zoned RB.

Mr. Berry recused himself from the item.

Mr. Amirault was present and reviewed his proposal to operate a lawn maintenance business from his home. Storage and maintenance of equipment will occur on the property. He has been running the business from this property for about 2 years. Employees arrive in the morning and leave with the trucks. At the end of the day the trucks arrive back at the site, are unloaded and employees go home. Equipment is stored at the back of the property away from visibility from the road. There is a large shed and tarp type structure on site where equipment is stored. Mr. Amirault stated he put in an access to the rear of the property upon purchasing the house. It is a new dirt driveway.

Public input:

Mr. & Mrs. Dougherty of 412 Middle Road were present. They feel that the privacy and enjoyment of their own property is being wrecked due to the existing business. They highlighted the following points and concerns

- Hours of operation are 2:40am to 11PM.
- The operation uses more employees and trucks than permitted by ordinance of the town.
- Culverts have been put into place in the driveway next to their property which has caused drainage issues on their property. No permits were issued for the earthwork.
- Urination in view by employees has been reported to the police.
- The use is diminishing value of their property.

Alison Peters, Appraiser was present and spoke on behalf of Mr. and Mrs. Dougherty. She read a statement to the board indicating that the home occupation approval will negatively impact the value of her client's property. She feels the six criteria required by code can't be met. Common sense is that a buyer will not want to pay as much for the property because it is less desirable. Externally adverse aspects such as noise, lack of privacy, water issues would negatively impact value.

Jean Villacci of Villacci Motor Sales was present. He is the abutter on other side of the subject property and has a different experience than Dougherty's and is in favor of the proposal. He feels that details can be worked out with the neighbors. The board should visit the site. Water concerns are partly a result of natural grades and the presence of ledge. The applicant has worked to get water off neighbor's property as well as his own. He does not feel his property value is diminished. He wants to work with neighbors to create a positive situation.

Public portion of hearing closed at 8:12PM

Board comments and questions included:

- Did the applicant do any investigation as to allowed uses prior to purchasing the property?
- Mr. Meyer asked about the tarp type structure as status of a building permit. Mr. Brown indicated that this does not appear to be permitted currently and will require a building permit.
- Culverts and road are 60 feet from abutting bedroom window. Culvert is on property line. One culvert is from the house under driveway to a ditch which runs along property line and into abutting property. One is on back and went under the fence but diverted to go around whole back corner of house and along back property line.
- Time of activity. Abutter had photos and presented them to the board. At 2:41 am the applicant was shown snow blowing the driveway. An employee was present at the time.
- There are three different commercial vehicles on property at any given time. Plow, sander and rack (dump with side panels) trucks. Parked on property when not in use.
- Regularity of occurrences/disturbances.
- How many employees the abutter has seen. They stated three beside the applicant based on the number of vehicles and actually seeing the person.
- Number of cars parked on property. The employees take the company trucks and leave for the day. They park in various areas on the lot.
- Type of work done by employees outside of structures. Where do they wash equipment, snow blowing, cutting trees, mowing all done on the property?
- Neighbor has seen applicant working on equipment in the driveway and has photos.
- Loading and unloading trucks. Backing up trucks with beeper.
- What is required to be disclosed in an appraisal vs. real estate listing? i.e. water problems in back yard.
- Equipment inventory:
  - Truck inventory (2 ¾ ton pick ups and 1 ton dump) three trucks total. Commercially registered for weight ratings. Two 16' landscape trailers. Open not boxed. One truck has back up signals. This is the large dump truck. It is not a plow truck but does go out during snow storms.
  - Two walker mowers commercial grade.
  - John Deer Tractor, smaller in nature.
  - Two back pack blowers. Snow blowers
  - Walk behind bush hog
  - No hardscape. Concrete blocks left from a previous owner.

- Grass clippings dumped off site to be recycled. All leaves dumped off site. No materials brought/dumped on site
- Employee day ends between 3-5 pm and do not work on weekends. The applicant does plow his own road and may have been done at 2:40a.m. He also plows the driveway across the street. He can't let snow build up because trucks won't be able to push it.
- Shed approx. is 16'x20' was on property when purchased (studio) now keeps hand tools etc. 12'x24' tarped structure. This is primary storage of lawn mowing and plowing equipment.
- Use of power washer which is used to wash business and private use at front of the property. Maintenance is done at the front of property but large jobs are brought to a mechanic. Done in the garage by the house. Washing trucks done in driveway.
- Part of the house is used for paperwork. Desk and filing cabinet in space. His wife and he do the paperwork.
- The property address is not advertised and customers do not come to his property.

Mr. Meyers noted that John Pray had a similar application several years ago. The board put specific accommodations/conditions on the approval and he suggested those be circulated to the board, applicant and abutters. The item could be revisited at the next meeting. Mr. Beaudoin noted that he will not be able to attend the February meeting.

Mr. Beaudoin expressed concern that the use is unable to meet the criteria of a home occupation. Mr. Given agreed and stated that abutter concerns would need to be addressed. This type of business generally grows until it is not suitable for home occupation. This may be too intense for the current regulation.

There are currently more than two employees. The Pray application was a hardscape business and there was more of a visual impact of stored materials to address.

Mr. Audet stated that one employee could park off site which would address the number of employee criteria. It is hard to define the line when the business outgrows a home occupation. Compromise with abutters is critical. This is a small business. Work is not being done on the premise

Mr. Given noted that pressure washing commercial equipment up to several times a week is more intense than residential use of a pressure washer. Noise is an important noise consideration.

It was confirmed that a fill permit will be required for the driveway work. The permitting is under way.

Mr. Keeler inquired about the surface water concerns. Sounds as if when water was more specifically directed into channels issue was made worse. How would the Town office handle if a neighbor complained that a drive was created without a permit and presented water issues. Mr. Brown stated that fill permit requirement is a trigger. Status of problem

and enforcement actions would be dependent on permit/application. If no permit required then it is a civil issue.

Mr. Audet would like to see Mr. Prays application for reference before making a decision.

Motion: Mr. Given made a motion to continue the application to the March meeting and that the Pray application be circulated as appropriate. Additionally the square footage of the shed, tent and the office space in the house is provided. The motion was seconded by Mr. Audet.

Vote: Yea – Unanimous. (Mr. Berry recused and Mr. Beaudoin voting as alternate)

- d. **10 Tidewater Cove. Sae Gozashti-** Requesting Condition Use under Section 6.2 for an addition. Parcel U01-189, zoned RA.

Mr. Gozashti was present. Chris Riley, applicants architect was present and gave an overview of the application. He explained that a deep energy retrofit is planned which requires taking down the garage and an expansion within the SOD of not greater than the maximum allowed 20%. This will be done in two phases. The property is located adjacent to Tidewater marsh.

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

Board comments and questions included:

- Have alternatives been considered?
- WVOD
- Nonconforming lot due to lot size and frontage in accordance with 7.15 in the SOD. The lot does meet underlying zoning requirements.
- Input from abutters in regard to the modern design of the structure. None are present or have submitted comment. The applicant has spoken with some neighbors.

Motion: Mr. Keeler made a motion to approve the application. The motion was seconded by Mr. Berry.

Vote: Yea – Unanimous.

- e. **342 US RT 1. Saint Falmouth LLC.** Requesting a Variance under Section 8.4 for a single family dwelling. Parcel U53-002, zoned BP.

Tony Donovan was present representing the owner. He is commercial realtor representing the leasing of this property for the better part of the last 2 years. He has showed this property to prospective buyers representing a host of uses. The property was built as a residence for a woman who had an apparel business in Portland. She used the structure to show her apparel and have parties, displays etc. There was one owner since who had a business they operated that may not meet current zoning. Mr. Donovan reviewed several points supporting the property as non-desirable for a business. The building is designed for a house use and the town recognizes it as a house. Zoning changed and the nonconforming use was lost. The structure is not able to be used for its intended and practical use. This is a house in a business

zone which can't be sold, leased or occupied as a residence. The applicant cannot find a commercial use to fit.

A letter was submitted by Mr. Donovan to the board. It was sent to him this evening and he is passing it along for consideration.

Linda Mealy director of Maine State Ballet which abuts the subject property was present. She is in favor of the proposal. Her board of directors voted unanimously in favor. They feel the proposed use will have less impact than forcing a commercial use and that it is reasonable that this be used as a residence.

Mr. Berry questioned the ability of the board to review application for a use variance. It was confirmed that the Town Council has jurisdiction for this request. The board agreed that it is an unusual circumstance.

Mr. Keeler noted that if denied a 12 month resubmittal restriction would apply~~ies~~.

The applicant's agent withdrew the application.

- f. **57 Hurricane Rd. Robert Libby representing David & Emily Ghiorse**-Requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling. Parcel R06-083-J, zoned FF.

This item was continued to the February meeting.

## 5. Other Business

Mr. Meyer~~s~~ has some scheduling conflicts in the next few months and encouraged other members to consider acting as chair.

Mr. Berry nominated Mr. Audet as chair and Mr. Given as vice chair. Mr. Keeler seconded the motion.

Yea – unanimous.

Roland noted he will not be able to attend the February meeting.

## 6. Adjournment

The meeting adjourned at 9:18 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.*