

Approved: Stg 3/25/14

**FALMOUTH BOARD OF ZONING APPEALS
MEETING MINUTES
TUESDAY, OCTOBER 22, 2013, 6:30 P.M.
FALMOUTH TOWN HALL, COUNCIL CHAMBERS**

MEMBERS PRESENT: Willie Audet (Chair), Stan Given, Jonathan Berry, Dennis Keeler, Roland Beaudoin (Alternate)

MEMBERS ABSENT: Jay Meyer

STAFF PRESENT: Justin Brown, Code Enforcement Officer

1. Call to order

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

Roland Beaudoin was appointed as a voting member.

2. Approval of minutes from the previous hearing.

Willie Audet moved discussion of the minutes to the end of the hearing.

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

The Board discussed the completeness of the applications. Some of the plans submitted were not up to standard.

The Board changed the order of the agenda items.

4. Agenda Items

b. 5 Chestnut St. Caleb Johnson, representing Colleen Evans- Requesting a Variance under Section 8.4 to construct a more conforming Single Family dwelling. Parcel U17-031, zoned RA.

Caleb Johnson, representing Colleen Evans, explained that when they began renovating the home they discovered that it has a wooden foundation which is past the point of maintenance and repair. It needs to be replaced with a concrete foundation, which will require them to lift the home, move it to a neighboring lot, install a new foundation and then place the home back onto it. The cost of this work is estimated at \$60,000-80,000, which exceeds 50% the value of the home as listed on the tax card. It would be more cost effective to build a brand-new home on a new foundation. He has advised Ms. Evans to rip down the existing home and build a new home that would be more conforming. The lot currently has more than 50% impervious surface, which is against the ordinance requirements. By reducing the impervious of the house, roof, and driveway, they can get the new home to less than 50% coverage. In addition, the house is non-conforming in relation to two setbacks on the property. They cannot comply with all side setbacks, since this would lead to a building that was 17 feet wide. They can bring the proposed house back from all setbacks to make it more conforming.

Roland asked why this is a variance under 8.4.

Mr. Johnson said 8.4 only allows for a 20% reduction of setbacks, which would only allow them to build a building 16 feet wide. He addressed the variance requirements in order. *A. that the property cannot yield a reasonable return without the variance:* he explained that the existing home is assessed at

\$107,000; spending more than half the assessed value of the structure to move it and return it to the new foundation does not make financial sense. It would be a net loss of \$40,000-60,000 to the owner. B. *Unique circumstances of the property*: while this is not the only narrow property in the neighborhood, the variance will set the precedent that other properties in the area could use to make their properties more conforming to town ordinance. C. *Will not alter the essential character of the locality*: they are putting in a small cottage similar to the one being removed both in design and size. It will be in keeping with other buildings in the neighborhood as well. D. *The hardship is not the result of action taken by the owners or a prior owner*: the owners did not create the lot size or write the ordinance that made it non-conforming. The wooden foundation under the home was built well before the enactment of the zoning ordinance and it is the source of the current hardship.

Dennis asked if the owner has had an appraisal done of the home.

Mr. Johnson said he has not had one done; he assumed Ms. Evans had one done when she purchased the home, but it would have evaluated both the home and the land together. The land is assessed higher than the building on the assessment card, as it typically the case.

Dennis said assessments are an approximate value. He asked if they have evaluated simply raising the home and placing the foundation under it.

Mr. Johnson said they would have to raise it so high in order to accommodate the necessary equipment to excavate under it that it would be shaky. Also that would not significantly reduce the cost; the cost of the necessary bracing might raise the cost.

Roland asked why the owner wouldn't see this money back if she invests in it.

Mr. Johnson said the cost of a new concrete foundation is \$20,000. A new foundation under this existing house is \$60,000-80,000. The cost of renovating the home is \$180-220/sf, which is the same for either renovation or new construction.

Roland asked if the home would increase in value if a new foundation was put under it; Mr. Johnson said no. He argued that this is an opportunity, both for the homeowner to have brand new construction at less cost than the renovation, as well as for the town to get a property that is more conforming.

Roland asked him about his response to the reasonable return requirement.

Mr. Johnson said the goal is to stabilize the house structurally; the wooden foundation is rotting and has been undermined from the interior by hand excavation done by the previous owner. The homeowner would have to disclose that if she wanted to sell the property, which would devalue the property.

Roland argued that if the homeowner invested in a new foundation, however expensive, it would be a livable house.

Mr. Johnson said it couldn't deliver a reasonable return because the homeowner is being forced by the situation to invest more than half the value of the house to replace the foundation. If the setbacks were not an issue the solution would be easy: rip down the house and build a new one. Since the ordinance went into effect and made her conforming house non-conforming, that is putting a \$40,000-60,000 bill on her.

Roland asked how many lots in the neighborhood are non-conforming by way of having narrow lots.

Mr. Johnson didn't know, though he saw a handful of properties on the tax map of the area that seem to be of similar size. The setbacks imposed by the ordinance are adding in excess of half the value of the home to the renovation project.

Dennis asked how much the owner paid for the home and property; Mr. Johnson didn't know.

Dennis said he is trying to compare the incremental cost of the foundation to one aspect of the property. If the property is worth a certain amount, the improvements to the home will raise the value of the property.

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If the property is only worth 107,000 it is a significant piece; if the property, after renovations, will be worth \$500,000-600,000 than it is much less disproportionate. He asked about the budget for the renovation.

Mr. Johnson said he hadn't been comparing this to that.

Dennis said if this is a \$300,000 renovation, which would increase the value of the home by that amount, he had a hard time seeing that the property couldn't yield a reasonable rate of return by increasing that to \$340,000.

Mr. Johnson argued that if the foundation cost \$50,000, that is 15% of \$300,000. If the property owner wanted to see a 10% return, that is all gone.

Dennis discussed the reasonable return standard; it is a strict standard that is hard to meet.

Mr. Johnson said that, on a 1500 sf house, a \$40,000-60,000 hit as a result of the ordinance making it non-conforming is unreasonable. He has advised the owner that it would not be wise to renovate this house and put an \$80,000 foundation under a 1500 sf house, when that foundation should cost \$20,000. Moving the house will require disconnecting all the utilities; it will mess up the framing and cause cracking on the inside. It is cheaper to rebuild a new home.

Dennis agreed that it is cheaper, but that is not what the standard speaks to.

Willie said the law courts have defined what a reasonable rate of return entails.

Roland asked if the homeowner could recoup the amount of the new foundation when the house was sold.

Mr. Johnson said no; she would lose the amount of the foundation.

Roland asked how he knew that.

Mr. Johnson said the home was just sold at market value; they are going to add \$60,000-80,000 to that with the new foundation but, based on his experience as a developer, this would not increase the home's market value by that same amount.

Roland wondered how much would be returned to the owner if she sold it.

Mr. Johnson thought she could sell it for the same purchase price, leaving her in the hole. The issue was discovered by his engineers, and not by the home inspector.

Stan asked if the entire foundation is wood. Mr. Johnson said it is.

Stan asked if the house is in need of renovation; Mr. Johnson said it is. It needs work to the basic deferred maintenance items: roof, electrical, plumbing and heating updates.

Stan asked if it is in danger of being condemned. Mr. Johnson said there is a structural issue with the foundation but the rest of the house is livable in its current state.

Stan asked the height of the foundation; Mr. Johnson said it is probably 6 feet.

Stan asked if it is excavated. Mr. Johnson said no; it used to be a crawl space, but a previous owner had excavated it, resulting in undermining.

Stan said it is hard to come to a decision on a reasonable return absent any hard costs.

Johnson asked if they would like to see line items on the cost of the foundation.

Jon thought the issue was more fundamental. Under 8.4.c.1 the applicant is asked to document the nature of the hardship. They do not have photos of the basement, a copy of the purchase and sale, an appraisal of the house, a budget for the renovation, or the original home inspection. There are quite a few homes in the area that are in disrepair, so this property is not unique. The land they sit on is the valuable asset. Putting an \$80,000 basement under the home is a reasonable return when you factor in the value of the

land. The land on the appraisal card is listed as being worth \$271,400. He thought this was why Ms. Evans purchased the property. The deed for this was executed on June 24, 2013; as of that date, this property was worth what Ms. Evans paid for it. The reasonable return standard isn't met by the argument that, without the variance being granted, they lose money. It is met when, without the variance, the property itself cannot realize a reasonable rate of return. He needed to see more of the information he listed before making a decision on this standard. He didn't agree with the argument that the ordinance caused the hardship.

Johnson argued that, without the changes to the ordinance, there would be no 15% premium imposed on the installation of the new foundation. That premium will erase and return she might have made on her investment.

Willie asked the purchase price of the home.

Colleen Evans, homeowner, said it was approximately \$390,000.

Willie argued that the applicant purchased the home after the ordinance went into effect; therefore she was aware of the limitations imposed by the ordinance.

Jon asked if Justin could provide the applicant with a copy of the portion of the MMA handbook as it relates to variance requests. This might help applicants understand the law courts requirements in relation to variances.

Justin stated that those are guidelines provided to the Board but he could provide them.

The board discussed other options for the property under different ordinance sections, including sections 6.5 and 6.9.2.

Johnson said they would be happy to rebuild within the same envelope and footprint; they wanted to improve the non-conformity, get further away from the property lines and reduce the impervious surface.

Johnson withdrew the application.

a. 47 Allen Ave Ext. Eric Faveau - Requesting Conditional Use under Section 6.2 & 8.4 for an extension of deck, porch and a Variance for a roofline. Parcel, U34-007, zoned RAM.

Eric Faveau explained that they had decided to keep the current roofline and withdrew the application for a variance. He presented some sketches to clarify the elevations and layout of the deck and roof. He has already begun construction on the new family room, which will access the new deck.

Stan asked if they are adding something on the side of the house that faces Allen Avenue.

Mr. Faveau said the addition is the decks and roofs.

Dennis asked what the intention was with the roofline variance and why he is withdrawing it.

Mr. Faveau said the intention was to change the hip to a shed. It would have allowed him to install a full beam and given him a nicer ceiling inside, but they want the look of the hip to remain.

Dennis said this is the porch facing Allen Avenue. Mr. Faveau said that is correct.

Dennis said they are now going to enclose the existing space, so no board approval is necessary. Justin confirmed that is correct.

Dennis said the only thing in front of the Board is the farmer's porch on the side of the house, and the new deck.

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The Board discussed what Mr. Faveau was now proposing, and what needed Board approval. The Board is being asked to approve the proposed deck and the porch. Justin explained that a portion of what he is proposing is within the 25 foot front setback, and that is why he needs Board approval.

Mr. Faveau said his house is angled to the property line; the house tapers away from the property line. He will be no closer than 10 feet to the property line.

Dennis asked why the deck falls under 6.2 if it meets the setback.

Justin said extending the deck meets the 6.2 requirement of not coming closer than 10 feet from the property line but it falls within the 10-25 foot setback limit.

Roland asked how they knew this met the 10 feet.

Justin said there is a plot plan that is to scale, but it is not a survey. They talked about locating pins.

Mr. Faveau said the architectural survey he provided the Board was for an application for a barn for the property. He got it from the property record files at Town Hall. The porch is not shown on it. He also has a land survey showing that property line. He put the conservative number on his plot plan. He measured 15 feet from road to the fence, which he believed is on Town property, and the shortest point of the porch from that is 11 feet. The closest point of his house is 26 feet from the road.

Willie asked if he had located any property pins; Mr. Faveau said he had not.

Willis asked if the fence in on his property; Mr. Faveau didn't know.

Willie said if he voted to approve this, it would be with the condition that Mr. Faveau has a survey done to locate that front property line.

Dennis said there is a pin shown on one of the sketches.

Willie said this property was subdivided in 2001; this house originally came with 18 acres. There should be some baseline information available on this property.

Public comment period opened; no public comment.

Stan agreed with Willie's point about the survey. He felt that would be for the homeowner's protection.

Dennis said if they were sure of the property line, he would be nervous about the deck being exactly 10 feet away from it. Without being sure of that property line, he was extremely nervous about this. He was willing to vote on it, but he agreed with Willie's suggestion for a condition requiring a survey.

Mr. Faveau had a land survey that shows the front porch but it doesn't have a scale.

Jon agreed that it should pass, with the condition that the 10 feet be confirmed, either by survey or by other public records, to Justin's satisfaction.

Roland asked if there was a time limit on the condition; Justin said it would be required prior to the issuance of a building permit.

Jon moved to approve the application for a deck and a farmer's porch as described in the application, with the condition that the 10 foot setback be confirmed via either survey or other public records, to the satisfaction of the Code Enforcement Officer. Stan seconded.

Motion carried 5-0.

2. Approval of minutes from the previous hearing.

No minutes were available for approval.

5. Administrative discussion regarding a Board meeting in December.

Justin explained that the regularly scheduled meeting for the Board would fall on Christmas Eve.

The meeting was adjourned at 8:00 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary