FALMOUTH BOARD OF ZONING APPEALS
REQUEST FOR HEARING
8.2.1 Mislocated single family dwelling appeal

Name of Applicant: _____**Phone#**_____

Address of property under appeal: _____

Map/Lot _____ **Tax Sheet** _____ **Zone** _____

Mailing Address (if different): _____

Property Owner (if other): _____

Email Address _____

The undersigned requests that the Board of Appeals consider An Appeal:

8.2.1 Mislocated single family dwelling appeal.

In addition to other powers conferred by this section 8.2, the Board of Zoning Appeals shall have authority to hear and decide appeals taken from decisions made by the Code Enforcement Officer that an existing single family dwelling or its attached garage violates the setbacks for the zoning district in which it is located and that the violation must be remedied by removal or relocation of the portion of the structure which encroaches into the setback or by the acquisition of abutting property. If the Board finds that the violation exists, as found by the Code Enforcement Officer, it may nevertheless grant the appeal and render a decision that permits the existing structure to remain but shall not authorize any expansion, enlargement or relocation of the structure within the required setback area provided that the Board finds that the following criteria

a. It would not serve the public interest to require the removal or relocation of the structure or the acquisition of abutting property;
b. Allowing the structure to remain in its existing location would not be contrary to the public health, safety or welfare and would not unreasonably detrimentally affect the use or market value of abutting properties;
c. The setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the petitioner, a predecessor in title or agent of either;
d. The petitioner has no reasonably available alternative to this appeal.

The appeal application must be accompanied by a survey, stamped by a Maine professional licensed land surveyor, showing the property boundaries and the location of the offending structure.

Any appeal granted under this section shall be conditioned upon the petitioner's entering into a Consent Agreement with the Town, acting through the Town Council, which provides that the Town will not bring an enforcement action with respect to the violation if the petitioner pays a civil penalty to the Town stated in the Consent Agreement. The Consent Agreement shall reference the action of the Board and shall become effective upon signing by the petitioner and the Code Enforcement Officer and payment of the civil penalty. The Consent Agreement shall be recorded at the Cumberland County Registry of Deeds by the Town.

Sec. 1-14. General penalty; continuing violations; consent agreements

(a) Whenever in this Code or in any ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore and except as otherwise provided by state law, the violation of any such provision of this Code or any ordinance shall be punished by a fine not to exceed the maximum amount as allowed by 30-A M.R.S.A. §4452 for each offense. All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.

(c) In determining what, if any, civil penalty to impose as part of a consent agreement entered into pursuant to section 8.2.1 of the Zoning and Site Plan Review Ordinance, the Town Council may consider:

(1) how long the violation has existed;
(2) the circumstances surrounding the construction which violates the setback;
(3) whether a building permit was issued for the construction;
(4) whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line; and
(5) such other facts as the Council deems relevant.

Application Authorization

I hereby make application to the Town of Falmouth for the above-referenced property(ies) and the development as described. To the best of my knowledge the information provided herein is accurate and is in accordance with the Zoning Ordinance and Subdivision Ordinance of the Town, except where waivers are requested. The Town of Falmouth Planning Board and/or town employees are authorized to enter the property(ies) for purposes of reviewing this proposal and for inspecting improvements as a result of an approval of this proposal. I understand that I am responsible for appearing, or having someone appear on my behalf, at any and all meetings before the Planning Board.

Signed: _____ Date: _____

Printed name: _____

Please identify yourself (check one): Agent* _____ Property Owner_____

*(If you are an agent, written authorization from the property owner must be attached to this form.)

I certify that the information contained in this application and its supplement is true and correct.