

**TOWN OF FALMOUTH**  
**Board of Zoning Appeals**  
**Minutes**  
**Tuesday, March 27, 2012**

**MEMBERS PRESENT** – Fred Jay Meyer (Chair), Dennis Keeler (Vice-Chair), Stan Given, Jonathan Berry, Don Russell (Associate), Rudy Israel (Associate)

**MEMBERS ABSENT** – Willie Audet

**STAFF PRESENT** – Justin Brown, Code Enforcement Officer (CEO)

**1. Call to order:**

The meeting was called to order at 6:28 pm.

Jay Meyer changed the agenda order, moving the Fairchild item first.

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

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

Jay Meyer made amendments to the January 10, 2012 minutes.

Dennis Keeler moved to adopt the amended January minutes; Jon Berry seconded. Minutes approved 4-0. (Russell abstained)

Stan Given moved to adopt the February minutes; Jon Berry seconded. Motion carried 5-0.

**3. Completion of applications**

The Board found that the applications were complete.

**4. Applications**

- c) 3 Kilborn Wy, Stefanie Fairchild-** Conditional Use under Section 6.2 for an addition and deck. Parcel U19-008, zoned RA.

Jed Wright, Ms. Fairchild's husband, presented the application. They want to put a small addition on the rear of their house. They had an application approved 2 years ago but the approval has expired; this proposed addition is slightly larger than the previously approved one.

Public comment period opened; no public comment.

Dennis Keeler asked about the details of the proposal.

Mr. Wright described the proposed addition; there is a deck in the area where the kitchen will be pushed out. The additional 10 feet will go to the rear of the garage and meet the line.

Dennis Keeler asked if any of the new construction was from a prior approval.

Mr. Wright showed where the new portion of the deck will be; the plan is to add another 9 feet of deck towards the back.

Rudy Israel asked about the dimensions listed on the plans.

Mr. Wright said those are the measurements from the neighbors' house, to show that there is no movement toward the neighbors' house. The proposed construction will maintain the same distance from the neighbors' house.

In response to Dennis Keeler, Mr. Wright said it is 26 feet from the property line to their house and 41.3 feet from the neighbors' house.

Jay Meyer asked about the setbacks; on the west side of the property there is a setback to the existing house of 26 feet; on the other side it will be 22 feet and 74 feet from the rear line. Mr. Wright confirmed those measurements.

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

- a) **1 Shady Ln. Brent Nappi- ITEM TABLED-** Conditional Use under Section 8.3 for a home occupation. Parcel U59-018, zoned BP.

This item was tabled prior to the hearing.

- b) **65 Middle Rd. Jean & William Bradshaw-**Condition Use under Section 8.3 & 6.4 for a change of use to a seasonal ice cream shop. Parcel U32-048, zoned RA.

Jay Meyer explained that the applicants requested that Willie Audet recuse himself. Willie Audet contacted Jay Meyer and explained that he did not feel that he had a conflict that would prohibit him from participating in this application. He was not present at tonight's meeting due to illness.

Jean Bradshaw discussed the discontinuance of the use of the building. She sent in the real estate listings for the property that showed that it has been listed and advertised as a retail space.

William Bradshaw explained that the ceramic shop had materials in it up until last month, when the owner moved out.

Jay Meyer asked if there were any changes or refinements in their plans for the shop since the last meeting.

Ms. Bradshaw stated that they were now thinking of having operating hours of Sunday –Thursday from 11am – 9pm, and possibly Friday and Saturday until 10pm. That isn't set in stone, but is their current thinking. They drew a parking plan that shows they can put 11 customer cars out front with 4 spaces for employees on the side, and 2 spaces for the upstairs tenant. They have changed the parking; the current plan is designed so that if someone turns onto Pine Rd. they can drive through which they thought addressed the concerns regarding traffic and access to the lot.

Mr. Bradshaw said the curb cut on the Portland side has been closed and they feel it should remain closed. An entry on Pine Rd. provides easier access and better parking. They can now accommodate enough parking spaces for customers, staff and the upstairs tenant. He spoke about the lighting; they are not going to change the lighting that is on the site now. They plan to add some ground lights to provide light for people walking into the business. These will not affect anyone who lives in the immediate area.

Ms. Bradshaw said she spoke with the current owner; the lights under the awning swivel and can be pointed in different directions, and she used to point them toward Pine Rd. The shop won't be open in the winter when it is dark earlier; in the summer it will be light until 9pm so they don't think lighting will be an issue. They feel that having a seasonal business will be a much less intense use than a year-round ceramics shop; the prior owner said she was there 3-4 nights a week until 9:30 pm with 20-30 customers.

Public comment period opened. Jay Meyer stated that the Board received an email from Tori Milan.

Holly Maniatty of Middle Rd. said she didn't see any proof that the Bradshaws have permission from Mary Eltman, the owner, that they can speak on her behalf.

Jay Meyer explained that applicants must demonstrate interest in the property; they have a Purchase & Sale agreement.

Ms. Maniatty said that the Town's tax assessment in 2009 referenced the property as "ceramic shop - closed". She said that was the status of the property; a requirement for the conditional use is that the business was open for 12 months prior. Any more traffic than that to a closed business would be an increase. Section 3.12.2.b references scale and density consistent with the use; there is no traffic that would be consistent with a shop that is closed. She was unsure what the setback is for a retail use from residential properties. She said it was not clear that they met either a 50 or 100 foot setback from the parking spaces. She said that in section 5.1.7 there must be one parking space per 3 seats in such an establishment; she felt the amount of parking proposed speaks to the density of traffic they expect. She wondered when deliveries would be made during business hours, and the impact on traffic. Section 8.3 states that the proposed project will not impact the design and general character of the neighborhood; this type of use will impact the residential neighborhood. Section 8.3.e states that the proposed project will not result in a hazard to pedestrians and/or traffic. She felt that adding a turn around to Pine Rd. adds a hazard. She asked what they could do with the property during the winter when they are closed; she said they could park a truck or boat there. She asked who will enforce a prohibition against people eating outside, and whether they would need approval from the Town to get an outside eating area. She asked about the buffers required for a use like this. A home occupation requires that the open hours are part-time in nature. The proposed use is not part-time in nature.

Jay Meyer clarified that this is not a home occupation.

Ms. Maniatty asked about handicap parking; it is not noted on the plans. She said the lights would be a huge issue for those people who live across the street. The letter dated 2/27 from a real estate agent pointed out the detriment of a commercial use to surrounding residential property values.

Stan Given asked about the location of her home; Ms. Maniatty indicated the location of her home.

Mr. Carl King of Middle Road spoke about section 8.3.b; while the applicants are not adding any structures, they will be adding 1000 sq. ft. of pavement and an access off Pine Road. A parking area for 17 cars will make the property incompatible with the general character of the neighborhood. 8.3 addresses noise and lighting; this use will be an increase in business hours from the ceramic shop. There is no way to enforce that customers will remain inside, and so noise will increase. Ground lighting is still lighting, and he thought there would be a requirement for more lighting if they are going to be open to 10pm. Vehicles coming and going will also increase lighting. The parking for the ceramic shop all faced the shop; the current proposal faces parking toward the street. The nature of the business is to have significant customer turnover, compared to the ceramic shop when customers remained for several hours. He never saw more than 4-5 cars at the ceramic shop going back to 2002; he felt the number of customers testified to in the letter was exaggerated. He argued that a busier road becoming busier will impact property values more than a building in need of paint and maintenance. He didn't think there was any reason why someone couldn't change this property to a residential use. This was not the only opportunity for this property to be improved. The proposed parking lot is a dramatic increase to what the neighborhood is used to. The property listing from May 2010 says the property has 1-4 spaces; in April and October 2011 the listing says 5-10 spaces, and now they say 17. He spoke to people on Pine Rd. and didn't think people there were aware of the proposed driveway coming off Pine Rd. He presented the Board with a photo of Pine Rd. He felt cars would be parked along Pine Rd. He didn't feel the application could meet the criteria for noise, lighting and general character of the neighborhood. He felt it was time for this property to conform to the residential use of the neighborhood. He showed a photo from another business owned by the applicants taken off their website showing people eating outside; he also provided the Board with a menu from that other business, showing that they provide other food beyond ice cream.

Susan Matthews of Middle Rd. lives with her father across the road from this property and said he is upset with the proposal. She has lived here for 54 years. The ceramic shop was thriving at one time in the 1970's, but there was less traffic and fewer houses in those days. She was in the building while Ms. Eltman taught classes. In 1999 or 2000 she was in the building to discuss a proposal with Ms. Eltman to create some disks, and at that time the classes were dwindling and there was limited stock. She approached Ms. Eltman in 2008 interested in renting the property for a home; she was told the building needed \$40,000 worth of work at that time. She was concerned with traffic, blocking her mailbox, pedestrians walking across her property, and litter. When Melcher's and Falmouth Variety were in business people walked across her lawn. This will affect her quality of life, as well as her father's.

Jon Berry asked what year she approached Ms. Eltman about the disks. Ms. Matthews said that was in 2000; there was not much ceramic product left at that time. She said it was not functioning.

Dennis Keeler asked about the repairs that needed to be done.

Ms. Matthews said that it had the shelving from Melcher's; the bathroom was not working at the time and needed to be redone; it didn't even have a sink. It was one big room with bad kitchen cabinets and an uneven floor. The roof over the side room was drooping. In 2005 Ms. Eltman's cousin moved her belongings into the side room; she claimed that it couldn't have been functioning as a business at that time.

Dennis Keeler asked about retail at that time.

Ms. Mathews was not living there at the time, but was there often. She didn't see a lot of use; in 2000 Ms. Eltman was selling pieces wholesale to paint-your-own stores. She didn't recall seeing a kiln in 2008 when she was looking at renting it to live in. The store wasn't open all the time. She had to call Ms. Eltman to let her in to look at the property. The store phone was discontinued a while ago. She felt that Ms. Eltman was still having classes in 2000; in 2008 she was not. The cousin moved there from Texas in 2005. There was not a lot of traffic in there, even when she had classes full-time. It wasn't enough traffic to comment on. The headlights pointed toward the store, not across the street, and it has been that way for the whole history of the building.

Betty Keller of Pine Rd. used to help Ms. Eltman with the classes. She said there was a water problem and that's why the roof sagged. The place was never empty; there was a kiln there. She never knew the place to be dirty; she helped clean. The way the driveway is set up in the application, people will have to back out onto Pine Rd. She didn't want the ice cream shop there. There is already a highway out back and Middle Rd out front. She is concerned with people turning around in her driveway. She was concerned with noise from kids at the shop at night and litter

Dennis Keeler asked when she stopped working with Ms. Eltman. Ms. Keller didn't remember; it was before she closed. It has been a few years. The ceramic pieces Ms. Eltman was sending out to people were purchased by people with their own shops. Ms. Keller stopped working there because the shop was going to close. She hasn't been there for a couple years.

Jon Berry said the letter from Ms. Eltman said she ran 6 classes a week, 4 at night and 2 during the day. Ms. Keller confirmed that. Jon Berry asked about the number of students; the letter stated between 10-30 people. Ms. Keller said she attended one of the morning classes and there were about 7 of them. Her class was Tuesday morning. People went to their same class every week. Jon Berry said the letter said the equipment and materials were not removed from the shop until January of this year. Ms. Keller said she hasn't been to the shop in some time, but the shelves were always full.

Don Russell asked her opinion of the proposed open hours, which would not be as late as the ceramic shop was open.

Ms. Keller said the ceramic classes were over about 9pm. She said they just don't want the ice cream shop. There would be lights and noise from the cars. It is too much on Pine Rd.; they have enough with the highway, Middle Rd. and the railroad.

Jay Meyer asked if she remembered any classes that had 30 people.

Ms. Keller said they had a Christmas party one year, and that was all the classes together. She thought there were 25-30 people at that event.

Tobias English of Middle Rd. lives across Pine Rd. from the proposed shop. He was intrigued with the idea at first. He was against it when he found out about the proposed driveway onto Pine Rd. Everyone has friends that park on Pine Rd.; it becomes a very narrow road. The road needs repair. He valued the serenity of the neighborhood and is against this proposal. He has been there since 2002 and there has been very little traffic in the last 3 years. The lot has never been able to park more than 4-5 cars comfortably and it shouldn't park more than that.

Dennis Keeler asked if he lived there when the ceramics shop was operational. Mr. English said yes; for the last 3-4 years there has been virtually no traffic, other than a truck to haul out wholesale material.

Dennis Keeler asked about the paved area; Mr. English said it is more like a cinder running track. It is not a nice piece of property. It was not ever used for parking; occasionally trucks would come in to haul pieces out but that would take 15 minutes once a week or so.

Dennis Keeler asked what those trucks were doing. Mr. English said they were in and out; it has been very quiet.

Chad Jones of Middle Rd. and his family have lived there since 1999. They are close to Ms. Eltman and have helped her in the past. On Tuesday nights there were 4-5 cars; that ended in 2003 or 2004. He echoed his neighbors concerns with traffic, pedestrians and lighting. He was concerned with litter and potential crime. He was concerned with his sons' safety; Pine Rd. is perfect for bike riding and scooters. He was concerned with customers using his yard for a bathroom if the business is busy. There has been minimal traffic and noise up to now. He didn't think this is an appropriate use for this location.

Risa Jones of Middle Rd. was concerned with the noise; on a hot summer night she takes her kids outside. She said the noise from the business would affect her family in their home. The headlights from cars would face her property and 10pm would be late.

Mr. Jones works for the City of Portland in the parking division. His number one call is blocked driveways and he felt this would be an issue on Pine Road. He felt 17 cars would be like bumper cars in that lot; he thought cars would park on Pine, Middle and Pleasant Hill. They like their neighborhood the way it is. He indicated the location of his home on the map.

Trish Dyk of Pine Road was concerned with the traffic on Pine Road. It is a dead-end road and people would have to turn around in someone's driveway or on the lawn. It is a small street, and it is hard to get out sometimes. It can be a dangerous corner. She was concerned with children walking to the ice cream shop.

Sue Carpenter of Middle Road said the proposed parking plan puts 6 parking spaces facing her living room. The headlights would shine at her house. She thought they were trying to squeeze too many cars in. She asked the Board to vote this down. She wanted to preserve the rural character of the area. She moved here in 2006 and was a good friend to Ms. Eltman and helped her a lot. She said Joanna Woods, Ms. Eltman's cousin, moved here from Texas prior to her moving here. The shop was not operating when Ms. Carpenter moved here. Ms. Eltman told her that the molds were no good anymore and that the kiln was there but was not operational. There was no paint and it was not in business when she was there. She said Ms. Woods would attest to that. She felt this business would be an imposition to their lives, their children and the senior citizens who walk along there. It is quiet and safe there. She was concerned with people

turning in the yards along Pine Road. She said the vacant parcel has wildlife living there and she was concerned that if there was a fire that parcel would burn. She was concerned that the cars would emit fumes.

Jay Meyer asked where the cousin was living. Ms. Carpenter said she was living upstairs. She helped her move both in and out. She moved out on Labor Day of last year.

Steve Grimshaw of Middle Road was in favor of the ice cream shop. He has lived here for 18 years. He argued that this is private property and pointed out that this is a seasonal ice cream shop, not a drag race or a Wal-Mart. He thought it would be nice to have an ice cream shop in the neighborhood. He pointed out that Nina's and the Foreside Market are both in residential areas and seem to be okay. He said Waldo's has an ice cream shop, and typically has only 3-4 cars at any given time. He argued that it isn't an overwhelming flow of automobiles.

Don Russell asked for Mr. Grimshaw to estimate how much pedestrian traffic the shop might get from the neighborhood based on his experience of the neighborhood.

Mr. Grimshaw said it is a fairly dense neighborhood and he thought there would be a lot of walking traffic. It is a very busy road during the morning and afternoon commute, but other than that Middle is a very quiet road. He thought a lot of the people who would go there are the people who drive by it during their commute. In response to Dennis Keeler he indicated the location of his home on the map.

Tori Milan of Pleasant Hill Road moved there in 2009 and didn't know anything commercial ever happened there. It is an extremely quiet, residential neighborhood. She isn't against the space, but felt it could be done within the residential use. She has small children and was concerned with the traffic, people, and use of the space around them.

Mary Stowell of Clifton Road thought people would be driving in, facing away from the neighbors. She didn't think there would be 3-4 cars there at a time. People who would walk there would be walking during the day, not at night. She was in favor of the shop. She didn't think there would be enough traffic there to warrant the negative comments made tonight.

Don Russell asked how much traffic she thought would be in the neighborhood.

Ms. Stowell thought there would be 6.

Public comment period closed.

Don Russell asked the applicant their estimate on the walk-in traffic versus auto traffic.

Mr. Bradshaw said this business would probably generate 60/40 neighborhood traffic/outside business. They wanted to attract neighborhood business and encourage people to walk there. They were willing to run the business with the parking as it is currently; they changed the parking plan based on the feedback from the last meeting. They are very flexible with their plan. This is a family-owned business that will be there for 5 months a year. He estimated the gross income of the business as \$100,000 or less; it isn't a big business. They have 47 signatures from neighborhood people that were excited about the proposal. They want to meld into the community. They would have 1 outdoor sign and build business by word of mouth.

Ms. Bradshaw said there was a lot of concern about parking on Middle Road and turning traffic from people traveling from Portland so they revised their plans to address those concerns. They have measured the lot and it can easily fit 11 cars. They thought the concern was not having enough parking; now the concern is too much parking. It seems people are against any business here but it has always been a business.

Don Russell was impressed with the number of people that signed the petition and were in support of the business and said they would walk there.

Ms. Bradshaw said that their other business closes at 9pm; there isn't much traffic after 8pm. In July it is light until 9:30; they won't be there in the winter.

Don Russell thought it was an improvement over the existing property. He thought it was unfair for people to be against any change at all. He was impressed with the applicants' willingness to adjust their plans in response to the neighbors concerns.

Dennis Keeler said there are two issues; whether there is a discontinuance of a non-conforming use and, if the applicant can get past the discontinuance, there is the burden of 8.3 and 8.7.

Jay Meyer thought there were three elements: discontinuance, improvement over the prior use, and then the standards of 8.3 and 8.7.

Dennis Keeler had a hard time getting past the discontinuance. All the arguments of the neighbors seem to go back to mid-2000's. In his mind there was no question that there were no operations in the last 12 months. The only question is whether materials stored in the building save it from the discontinuance. He didn't think it did. The operation as a retail space has not gone on in the last 12 months.

Jon Berry said there was a letter from Ms. Eltman that the operations were ongoing through January 2012.

Dennis Keeler said there were materials in the store; the question is whether that is "operating".

Jon Berry said the Town has been taxing that as an ongoing business. Dennis Keeler said the tax record in 2009 said the business was closed.

Jon Berry said the tax card stated that it is closed, but Justin Brown said that was an error. They marked it as closed because they thought the 2006 application was denied, but apparently that application was not denied, it was tabled.

Justin Brown said he spoke with the assessor; it is still being taxed as a ceramic shop. He was unclear if the tax would change if the shop was open or closed. He didn't think the listing as 'closed' was an error on the tax card.

Jon Berry thought one had to be in error, either the tax card saying closed or the tax bill taxing her on the equipment and materials. Given that the assessor says that it is being taxed as a business, the tax card saying 'closed' is inconclusive. He said the real estate listings also argue for a business.

Don Russell said the Board asked Bill Plouffe to discuss the whole situation. In a letter dated March 8, Attorney Plouffe stated that it was easier to state that it was discontinued/abandoned. While Mr. Plouffe felt the correct interpretation was that the property couldn't be a business, the ultimate authority rests with the Board.

Stan Given read 6.6 which addresses both non-conforming use and the use of a non-conforming structure. It was clear that the building hadn't been used as a ceramics shop for a number of years. He thought they clearly were not using the building. He argued that the use of the non-conforming structure had been discontinued.

Rudy Israel said there was no activity relative to the ceramic shop for a number of years. This exceeds the 12 months allowed in 6.6.

Jay Meyer said it clearly hasn't been used actively as a shop for the last 12 months, other than the storage of materials. He spoke about the preservation of the use through real estate listings. They have allowed that as a continuation of use in the past. Ms. Eltman refers to her attempts to lease or sell the property in the last few years. He was more concerned with the intensity of use in a residential area.

Jon Berry, in response to Stan Given's point regarding the use of a non-conforming building, thought the apartment is also non-conforming, and that has been in continuous use.

Justin Brown confirmed that. It is non-conforming because it is not a single-family dwelling.

Jay Meyer suggested they vote to determine whether the application could be permitted as a conditional use in any way, subject to any conditions they might impose under section 8.7. This motion would also consider 6.6 (discontinuance) and 6.4 (improvement over prior use).

Don Russell moved Jay Meyer's suggested motion; Jon Berry seconded.

Jay Meyer said there were two ways to vote to deny the motion: either they could find that the use was discontinued or they could find that the use isn't an improvement over the prior use, based on the criteria in sections 8.3 and 8.7. He felt it was not an improvement. It is incompatible with the neighborhood because of expanded parking and it would have an adverse impact on the neighborhood due to noise and light, refuse, vehicle and pedestrian hazards and increased traffic.

Don Russell said there was noise and traffic from the corner store when that was open. He was swayed by the neighborhood support at the prior meeting.

Rudy Israel agreed with Jay Meyer that it was not an improvement over the prior use. It didn't meet the standards of section 8.3, particularly in regards to hazards to pedestrian and vehicular traffic. He felt there were significant traffic issues. He couldn't support it without improvements to ingress and egress to the property.

Stan Given asked Justin Brown if the residential use of the apartment was part of the non-conforming use. Justin Brown said yes.

Stan Given said Attorney Plouffe's letter spoke only to the commercial use. He agreed with Attorney Plouffe that the intent is to eliminate non-conforming uses as much as possible. He felt there was discontinuance here. He also didn't think he could support the application under 8.3; it has an impact on peaceful enjoyment compared to the previous use, and there would be an impact on the traffic in the neighborhood, including pedestrian traffic and the children. There will likely be increased litter. He was swayed by the neighbors' arguments regarding the impacts of the use on the surrounding neighborhood.

Dennis Keeler couldn't get past the discontinuance. He agreed with Attorney Plouffe; the courts have said that nonconforming uses are to be phased out as quickly as constitutionally permissible. He didn't agree that raw materials sitting on a shelf preserved the use and he was not convinced by the tax argument. He didn't think that this was an improvement over the prior use. People in residential neighborhoods rely on that being a residential neighborhood and that nonconforming uses will not move in. He thought the tax card could provide evidence to support an abatement request.

Jon Berry thought the Board should vote on 6.6 first; if the majority believes that it has been discontinued the property owner needs to know how to proceed. This property has been and is still being marketed as a potential commercial use. He wasn't certain the property has been discontinued or abandoned. He thought they could work out the issues of 8.3 and 8.7. Most of these concerns are beyond their control. Lighting, parking and traffic patterns are under the scope of the Planning Board. Most of the neighbors' concerns are based on conjecture. He believed that the applicants are willing to be flexible. Section 6.4 required the Board to determine that the use will be an improvement.

Jay Meyer clarified that Rudy Israel would be a voting member on this application instead of Don Russell.

Don Russell withdrew his motion.

Jon Berry moved to find that the use was discontinued under section 6.6. Stan Given seconded.

Motion carried 3-2 (Meyer, Berry opposed).

Dennis Keeler moved to deny the application for a conditional use, finding that the use will not be an improvement over the prior use under section 6.4. There was no second for the motion.

Jon Berry moved to deny the application based on the Board's finding 3-2 that the non-conforming commercial use has been discontinued. Stan Given seconded. Motion carried 5-0.

**d) 45 Foreside Rd. Hugh Smith, representing St. Mary's Church-** Conditional Use under Section 8.3 & for an addition and renovations. Parcel U07-005, zoned RC.

Dennis Keeler and Rudy Israel were recused from this item.

Nathanial Cram of Scott Simons Architects, along with Mr. Austin Smith presented the application. They were advised to provide additional materials by Justin Brown and they presented copies to the Board. The project includes an addition to the parish house, the demolition of the east wing of the parish house and minor interior upgrades to the church and rectory. There will be improvements to landscaping, including buffering along Waites Landing Road. The boundary survey revealed three parcels on the property instead of two. The 50 foot swath was owned by the heirs of the original owner of the property. As of today those three parcels are listed under the ownership of a single owner, and so legally have been merged. He discussed the history of the church and its design.

Mr. Smith said the church has a burial ground, integral to the campus. There are three buildings, the parish hall, church and rectory. The apartment is being removed for mold issues. The new addition will be on the west side. They are taking a non-conforming building and making it more conforming. The rectory is the home of the rector, who actually lives there. There are three burial areas that still have plots available. They are reinforcing the old churchyard with yew plantings. There is a labyrinth that is used for contemplative uses and some outdoor summer services. There is a memorial garden in the center of the property that provides cut flowers for the church. They want to keep the heavy landscaping on the property. They are maintaining the existing landscaping as much as possible and have designated no-cut zones. The trees have a high canopy so they have added a barrier planting below. The proposed plants conform to the ordinance in terms of spacing, alternating pattern, and sizing. The plantings at the lower parking area were designed to be conscious of headlights. They tried to use native Maine plants that would be low to the ground for an effective screen.

Mr. Cram said the current parking is haphazard. It isn't striped and people park where they like, which creates an unsafe condition that blocks emergency access. They wanted to provide as many of the required 47 spaces as they could at the upper lot, but they were short 13 spaces. They have met with the neighborhood and made significant accommodations to the neighbors concerns including shrinking the parking lot and installing landscaping.

Mr. Smith said they also used an existing curb cut to minimize disruption. They worked with the Fire Dept. to make sure it was accessible to all fire equipment. They exceeded the number of handicap accessible spots required due to the needs and mission of the church

Mr. Cram said the current design calls for a 10 foot wide access driveway off Waites Landing at an existing dirt parking area. The campus is extensively used and so their only choice was to enhance the area that is already used for accessory parking. Each driveway is 10 feet wide and goes in between the oak trees that already exist and contribute to the natural setting of Waites Landing. Most of the parking will be on the upper level. The lower level will be used for Sunday school and some for singing during the week, but most of the use of the buildings is on the upper level. Some overflow happens on Waites Landing currently; they hope those people will now use the lower lot. The traffic engineer, Tom Gorrill, evaluated the different intersections and found that these changes would not create any unsafe conditions. The driveway on upper Waites Landing is not in conformance; it meets Waites Landing at more than the required 60 degree angle. They will correct it to meet Waites Landing at 60 degrees and will widen it to

be a 15 foot wide drive to enhance its functionality as a two-way drive. Parking on Route 88 is allowed by the Town and is anticipated to remain. It is anticipated that the use of the church will remain the same; these changes are to accommodate the current use of the building. The basement is damp and unsuited for the children that use it and is not handicap accessible. The new addition will replace what will be removed: administrative spaces and Sunday school classrooms. He discussed the addition and renovation plans for all the buildings. The addition would be harmonious with the existing building. Their intent is to provide the minimum illumination allowed by the ordinance for safety. At the boundary of the site the light levels are below .1 fc. The fixtures on the poles meet the ordinance. A couple of existing lights shine beyond the property lines and those will be removed. The overall lights levels will be more evenly lit across the campus and not as glaring as what is there currently. The lighting will be on timers and will go off when the building is unoccupied. A couple of lights on the building will remain on for safety.

Jason Vafiades of Blais Engineers spoke about the stormwater report. They are using a system of catch basins, swales and a dry detention pond. There will be a 20% reduction of flows after the project is finished. He indicated the location of the stormwater management on the plans.

Jay Meyer said this is an expansion of a non-conforming use. Justin Brown confirmed that. They will have to go to the Planning Board.

Public comment period opened.

George Theborge of Geoplan Consulting presented the Board with copies of a report. He represented a group of neighbors from Waites Landing Road. He said this property has unique circumstances that need to be considered. The utilization of the site, inadequacy of the parking, and the locations of both the existing and new driveways are all unique considerations of this application. The Board must find the site in full compliance with all 9 of the conditional use criteria; the burden is on the applicants to prove that they meet those. Their first concern is that, up until a week or more, the applicant has not been following the section 9.2.b requirements for a landscape architect to be the lead for an application. While that isn't a jurisdictional issue for this Board, the lack of a landscape architect as the lead results in a lack of coordination. The landscape architect has now been brought in after-the-fact to correct some of the issues brought up by the abutters. They are now trying to tweak a bad plan. The worst part of the plan is that the highest-intensity use of the property is located along Waites Landing Road. The lowest intensity use of the property is internal to the site, near the rectory and the graveyard. What is being proposed is to intensify what is already the most intensely used portion of the property. Because of the poor site plan the application clearly fails 4 of the 9 criteria: lighting, glare, devaluation of properties, pedestrian and vehicular hazards, and drainage. The felt the application could not meet the 8.3.c criteria regarding the use and peaceful enjoyment of abutting properties due to lighting and glare. Current lights are directed toward Waites Landing and cause glare in violation of the ordinance; what is proposed will result in equal or even worse conditions. The topographical map from the Town's website shows that the upper parking lot is 15-20 feet above the neighbors' yards and home. The applicants have proposed 20 foot poles, but due to the topography the effective height of the poles will be 35-40 feet, even though the applicants are using down-directing lights. The lighting diagram presented tonight will not meet the ordinance requirements. The lighting at the driveway intersections is required by ordinance to be 3fc. They will have to put a light at the entrance of the lower parking lot. The applicants have indicated that they intend to request waivers, but he didn't think the Planning Board would allow them to go from 3 fc to 0; perhaps 1.5 fc, but he assumed a light of some kind would be required. The current configuration of parking has cars parked at an elevation of 15 feet above neighbors. All those headlights shine at the abutters; this condition will not be addressed with the landscaping proposed. While that exists now, the increased parking spaces proposed will expand the use and the condition. He disputed that the proposed angle of the upper driveway would meet the ordinance. Widening the flare of the curb cut does not re-orient the angle of the curb cut. The right angle needs to be carried back 50 feet or an island needs to be installed. The neighbors are concerned that vehicles exiting both driveways will sweep their properties with

headlights. 8.3.d addresses significant adverse affect on property values; no evidence has been offered that there will be no character change from what is out there now to what will be there. They will ask the Board to determine whether the proposed safety improvements would improve the property values across the street as the applicants contend. 8.3.f addresses significant hazards to pedestrian or vehicular traffic; he said there are safety hazards that are unique to the property. The driveway comes out 50 feet from Foreside Road and the concern is that cars turning from the upper driveway onto Waites Landing won't see cars coming from Foreside and turning down Waites Landing. He pointed out that the traffic report contains no measurements from the upper driveway. He argued that there is increased activity on the property and that there is and will be parking on Waites Landing Road. Waites Landing is narrow and has no shoulders. He said this proposal will not solve that problem, but in fact, since it intensifies use along Waites Landing, it will increase that problem. He said that the traffic engineer's report states that the church has seating for 150 people; the 19 parking spaces assigned to the church building are not enough. He said the full utilization of the parcel needs to be calculated. 8.3 h states that the project cannot aggravate existing or create new drainage problems. The proposed plan is to collect and direct all site drainage to a detention basin 50-60 feet back from Waites Landing Rd. Those systems are designed for a 100-year storm. The basins are designed with an emergency spillway in case of overflow due to large storm events; in this case the overflow is directed to a culvert, which he said is a 12 inch culvert and is crumpled. The neighbors' concern is that the applicants are concentrating all the flows toward that one spot and in a major hurricane the flows would damage the road and could come across the street and down into one of the neighbors' garages. The abutters have suggested a couple of different fixes including moving the proposed parking lot to the south of the parish hall with access from Foreside Road. The applicants' new plan shows the burial processional path through there. According to the church's website the churchyard burial yard is full. In the November site plan the addition was proposed in the middle of the currently shown "processional path". The neighbors also suggested changing the upper driveway to a one-way entrance only.

Jon Berry asked if he is claiming that the property values would be reduced.

Mr. Thebarge said the burden is not on the abutters to prove that there is an adverse impact, but on the applicant to prove that there is no adverse impact. Secondly, they have made claims with no supporting evidence; any claim that this will improve property values should be rejected on face value.

Jon Berry asked if their argument is that the values would be reduced if these improvements are made. Some of these conditions currently exist. Mr. Thebarge said these improvements will intensify the use of this area, which is lightly used. It will definitely negatively impact Mr. Andy Magnum's property.

Jon Berry said many of these issues would be deeply analyzed by the Planning Board. Mr. Thebarge said there would have to be some level of lighting at the entrances. It isn't shown on the plans right now.

Jon Berry asked about the glare put off by the proposed light poles. Mr. Thebarge said the idea is to focus the light down. A floodlight shines the light out to the parking lot and to properties around it. Pointing it down doesn't solve the issue of the glare as the neighbors will be looking up at them. These lights will not shine into the homes, but the headlights will.

Jon Berry asked if there is an existing drainage problem. Mr. Thebarge said there are substandard drainage facilities on Waites Landing. The Town has put check dams in the ditches further down the street. He argued that the rate of the flow off the property will be metered out at a 20% reduced rate except under hurricane conditions, during which it will over load the system and flow to the 12-inch culvert. It will overtop the road and flow to an abutter's yard.

Stan Given asked how Mr. Thebarge's proposed changes to the plan would impact the property values. Mr. Thebarge said it would have a dramatically less significant impact that what is currently proposed.

Stan Given thought the proposed plan would only be an improvement over the current conditions. Mr. Thebarga said current drainage flows in many directions. The proposed plan focuses all the drainage to one location.

Don Russell attended this church for many years. Parking is terrible and has been terrible right along. He understood the neighbors' concerns with the lighting and elevations. He asked the applicants' response to the abutters' proposed alternatives.

Mr. Thebarga said the neighbors support the Church's efforts to fix their parking problems. The changes the abutters have proposed would move all the traffic to Foreside Road and the parish hall would screen the neighbors from the headlights.

Jay Meyer shared the concern with the location of the upper driveway. He didn't think some of the concerns would be fixed by the proposed change to the plan; some light would remain even with moving the parking lot. He asked if they had any suggestions for a lighting fixture that would reduce the glare.

Mr. Thebarga said he thought there were better solutions out there, but they would have to see a revised lighting plan that showed where those lighting fixture would be located.

Jay Meyer asked if location would help to resolve some of these concerns. Mr. Thebarga said yes, and the number would be dramatically reduced by moving the parking lot.

Jay Meyer asked if the proposed buffering between the new parking lot and Waites Landing would be an effective solution.

Mr. Thebarga said they are pushing the parking right to the edge of the bank; any planting they do would not be very effective if it is below the level of the bank. He felt the Board needs to address the fundamental overall site utilization issues. The applicants can't mitigate cars exiting the driveways and shining headlights on the homes. They claim that vegetation on the other side of the street mitigates that.

Jay Meyer asked how the abutters' proposed changes helped with the drainage issue.

Mr. Thebarga said they recommend that they replace the culvert with an appropriately sized culvert and install a ditch. They think there are fixes to everything here.

Don Russell asked about the change in elevation. Mr. Thebarga said it slopes down a little on that side, but parts of it are 5, parts are 10.

Richard Bazarian of Waites Landing has been a member of St. Mary's for 15 years. He knows that many repairs are needed at the parish hall and that the church has grown. It is a hub of activity for the greater Portland community. This has taken it from a community parish to a program parish. Their concern is that the growth will continue. They are not here to block the project but to keep the health and safety of the neighbors. Many of these activities are not religious activities; Boy Singers of Maine, and the AA meetings for example. He testified that there is no buffer on his property and on Tuesday nights after the AA meeting lets out, the headlights shine into his home.

Don Russell asked how many cars are at the AA meeting.

A member of the public said there are 100-200 cars.

Mr. Bazarin said the upper driveway is about 75 feet wide at the entrance. He was concerned that when the lower lot, with 13 spaces, is full people will have to turn around and go back up Waites Landing. He spoke about the hazards around the upper driveway and its position relative to Foreside Rd. The street address of the Church is 43 Foreside Road, but the entrance is no longer on Foreside. The rector has expressed the wish not to have car lights shine into the rectory. He echoed Mr. Thebarga's comment that the traffic engineer's report did not address the measurements on the upper driveway. He spoke about

crime in the area; his car was stolen in 2008. He received a tax reduction from the assessor based on the location of his home.

Jon Berry asked about the tax reduction.

Mr. Bazarin said it was based on the property's location on a busy corner; the Church is not mentioned specifically. He said the newer burial garden has spaces, but the older ground is full. The burial processional will not go though the area suggested as an alternate location of the parking lot. He supports the project and the improvements proposed, but would like to advocate for changes to the upper driveway and more use of the 43 Foreside Rd. entrance.

Andy Mangum of Foreside Rd. has lived there about 35 years. The church has gotten busier in the last 12 years with an increase in non-church related activities in the parish hall. Changes have been made in the last 10-12 years that he didn't think would have been approved. He spoke about the daycare that was at the church at one point; it was only there about a year, but there was a fierce increase in the noise and traffic while it was open. They didn't used to have night meetings that required lighting, but then they added a pole light in the parking lot that is very bright and is on every night during the week, all night long. They also added floodlights on the side of the parish hall over the doorways that point toward his house and shine into his windows. They are both on all night long. The parking lot is on the brink of a hill; it brings the car lights right into his house. The church cut down a lot of the shrubbery and trees on that side at one point which left it completely exposed to his house. What they have now is considered grandfathered, but he didn't think it was. They made all these changes incrementally and he didn't think that was a truly grandfathered condition. Most of the proposed project seems geared to improving the use of the parish hall for meeting activities. He wondered why there were no restrictions on these non-church meetings in terms of time limits and number of attendees. He thought there were 45-50 cars in the parking lot, with overflow along the streets and driveways. There are more than 100 people coming, mostly one to a car. It is very noisy when they come and go. While the Church gives assurances that the activity won't increase, he didn't see any restrictions on the use. He felt many members of the neighborhood still don't know what the Church intends to do. He has looked into what he would have to install in order to buffer the light from the proposed parking lot; he would need a 20-25 foot high tree to block those lights. He supported the church improving the buildings, but the meeting hall is much larger than is needed for a church this size. He asked the Board to do a site visit at night to evaluate the lights. He said the lower lot is a dead-end lot; while it will be a good place to park to access the parish hall people will not know it is full until they are already in there. Once in there, they will have to back out onto the road to get out. It is a poor design. The distance between the two oak trees they want to protect is 22 feet; there is a dirt path there that is good enough for a oil truck to drive across. He didn't know how they did a traffic study without analyzing the traffic for the public meetings. He doesn't see a parking problem for Sunday church services; only the outside meetings. He suggested they move the rectory to make a better parking area. He thought they fabricated the processional path.

Trish O'Carroll of Waites Landing lives down the street. There have been accidents at the upper driveway; her son was in one. It would make a big difference if that driveway was one-way. She didn't think the Church has been really willing to consider the abutters' proposed changes. She felt the Church is choosing to expand their facility while asking the neighbors to suffer the consequences. It hasn't felt fair.

Kathy Coster of Waites Landing lives next door to Mr. Mangum across the street from the Church. She presented the Board with a petition signed by 32 neighbors objecting to the proposed project and asking that the parking be moved internal to the lot. She felt the changes would affect the neighbors' lifestyles with an increase in traffic to the lower lot. The drainage issue mentioned earlier would impact her property. The lights will shine at her home. The Church doesn't want to alter the park-like nature of their property; it doesn't seem fair to impact the neighbors' homes.

Jay Meyer asked if she would prefer that the Church use the Foreside Rd entrance.

Ms. Coster said if someone were to design the property from scratch, it would make the most sense to use access off from Foreside Rd.

Don Russell agreed that the entrance off Waites Landing is a bad entrance.

Linda Banks of Waites Landing can see all the parking from her front yard. She is an architect. The lights will be an issue and the headlights are already an issue. She wondered if the architects have an AA contract with the Church. The neighbors were bought in when the process was extremely far along. She contended that the Church engaged in schematic design and development before any site plan analysis was done. She felt the Church fell in love with the plan. They are talking about blasting to put a new storage area under the new little cathedral they are building in front of the new building. She felt the buildings planned would be prohibitive to build. She wondered if anyone had done any structural analysis of the existing buildings to establish whether they would withstand the blasting. She thought the section labeled "storage" was so large it could be used as a meeting hall. She felt the design process had gone very far without an approved permit. There is no hardship; there is plenty of space on the campus and no reason why they have to cram a small parking lot on the side of a cliff. They could increase the parking dramatically on the campus. There is no curb cut on Waites Landing; it is a little dirt path. She was not in favor of any lighting or curb cuts on Waites Landing. She felt the Church has significant financial investment in the plans as they are, and that is why they have not been receptive to the alternatives proposed by the abutters. There was no proof that they could raise the money to do this, even if this is approved. The drainage on Waites Landing is so bad that all along the golf course there is freeze/thaw that causes black ice and accidents.

Bonny Rodden of Shoreline Drive is a member of the Church. She wondered about procedure due to the late hour. She asked if they would consider continuing the hearing to another meeting.

David Banks of Waites Landing Rd. lives toward the end of the street. He likes having the church at the top of the street. His concern was about the property values at the top of the street. He felt the first group of homes would definitely have a negative impact. He offered to put together a group of appraisers to evaluate that. Safety was his biggest concern. Waites Landing is a big walking area and draws people from surrounding roads. People walk from 5-6 am to 8pm. He supported the expansion but wanted them to move the parking lot.

Jay Meyer asked what factors would impact the values, in Mr. Banks' opinion.

Mr. Banks felt the biggest factors would be the traffic and congestion; second would be lighting shining into the homes. Making the upper driveway one-way would really improve the situation and have a positive effect over what is there now. It is a major problem.

Don Russell moved to table the item; Stan Given seconded. Motion carried 4-0.

The Board scheduled a site walk for Monday, April 23 at 6:30 pm.

- e) **219 US RT 1, ESW Realty LLC** - Administrative Appeal for misinterpretation of the ordinance for a sign permit. Parcel U11-033-A, zoned SB.

Tabled due to time.

- f) **65 Gray Rd, Kimco Realty LLC** - Administrative Appeal for misinterpretation of the ordinance for a sign permit. Parcel R05-044-004. Zoned WFCMPDD.

Tabled due to time.

**5. Other business**

Jay asked for Board members to speak with Justin directly if they had comments on his suggested checklist.

**Adjourn**

Meeting adjourned at 11:15 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary