



**Board of Zoning Appeals  
Tuesday July 24, 2012 6:30PM Minutes  
Falmouth Town Hall**

**MEMBERS PRESENT** – Fred Jay Meyer (Chair), Jonathan Berry, Stan Given, Willie Audet, Don Russell (Associate)

**MEMBERS ABSENT** – Rudy Israel (Associate)

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

1. **Call to order:** The meeting was called to order at 6:32 pm by Chairman Fred Jay Meyer.

It was noted by the Chair that the Herlihey and Speckhart applications would not be heard this evening. The Melissa Smith matter will be taken out of order and is being heard first.

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

May & June minutes were continued to the August meeting for action.

3. **Completeness of Applications**

Mrs. Speckhart was not present because it was determined that the application is not complete. All other applications are complete and ready for acceptance and review.

It was noted that Mr. Russell will be voting as alternate only if someone recuses themselves.

4. **Applications**

(6:35PM ) **331 Foreside Rd. Melissa Smith**-Conditional Use under Section 6.2 for an addition. Parcel U18-009-B, zoned RA.

The applicant's Architect was present as agent and presented a letter to this extent. He noted that the existing sunroom is being modified. The proposal meets all setback requirements in the 250' Shoreland District. The views from other houses should not be impacted.

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

Mr. Given asked about the setback from the water. There is more setback than required. The plot plan shows the building at a skewed angle. The perspective drawing doesn't appear to represent that layout. The Architect addressed Mr. Given's comments. The proposed layout aligns the space with the waterfront. A 14 degree turn allows a view to the water and reorients the space to take advantage of the view. The Roofline is not higher or larger.

Mr. Meyer stated that the lack of road frontage is only reason for approval needed by the board.

**Motion:** Mr. Keeler made a motion for approval of the application as presented in the official record. Mr. Audet seconded the motion.

**Vote:** Yea – Unanimous.

(6:38PM) **20 Town Landing Rd. James Bonnie**-Conditional Use under Section 6.11 to tear down & rebuild a structure. Parcel U17-060 zoned RA.

Bonnie conditional use. Mr. Bonnie was present and circulated a handout. The proposal is to tear down a portion of the house to allow for rehabilitation. Structural problems exist and require the original plans to change. The sun porch in the rendering will add 168 square feet to the house. There are no setback issues. The original cottage is the area of structural problems. The house comes within 4' of the lot line in this area of improvements. The fence is being installed as part of the project. The neighbors have been made aware of the plans. The elevation shots submitted are to ensure the section on the left is completely built back as was.

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

Mr. Russell noted that “e” in the application was omitted. The second page of the application. Rev April 2003 on bottom. He asked if this is an outdated application and was given to applicant accidentally.

The Chair indicated that this error does not affect the standing of the application.

Mr. Given noted that Mr. Brown’s notes include a comment that he is not clear of intent. Discussion of section 6.9 ensued.

Mr. Brown expounded.

Mr. Keeler asked about the middle section specifically a reference to an 11 foot set back. The dimensions on the second page were reviewed by the applicant for clarification. The peak doesn’t extend higher than existing peak. The middle section of the house is remaining at the end of the project.

Mr. Meyer asked if there is any extension or enlargement of the structure. The applicant indicated the area which is expanded. He asked about the faulty foundation to which the applicant responded, sandy foundation, rotted sill. The applicant reviewed some more details of the process that will be used to make improvements.

Mr. Given asked for clarification that the entire house will be taken down. The applicant stated yes with a new foundation etc.

Mr. Meyer noted that 6.5 deals with damaged structures and that rotten sills are far less than 50%. He noted that another way to address this is 6.2.b.2. If read literally it doesn’t make

sense but is regularly allowed and the board has put a gloss on it. Under section 6.9 expansions are possible which they don't necessarily want to allow.

Mr. Keeler has grappled with same section and further discussion ensued as to the intent and application of the section in relation to this proposal. It seems unreasonable to require the applicant to tear down to the ground. The applicant indicated he could change the plan to accommodate the observation but it would be costly to go back to his professionals to change.

Mr. Berry observed that this situation has not been contemplated by the code.

Mr. Keeler noted that a ruling on this application sets a precedent as to how this section is applied in the future. Mr. Meyer felt it can be approved if 10' is observed.

Berry asked Justin to avoid strange structure how does Justin interpret regarding leaving one wall to skirt around ordinance. Mr. Brown brought up be excluded and not sure if addresses this specifically. Doesn't believe it does.

Mr. Keeler willing to play with the language. Can't be right to allow replacing stick by stick but not as proposed. Going to hang his hat on the word maintained.

Mr. Audet asked if Mr. Keeler is okay with the application. Mr. Keeler stated yes.

Mr. Russell noted that common sense should prevail.

Mr. Given again expressed concern about setting a precedent.

**Motion:** Mr. Keeler made a motion for approval of the application as presented in the official record. Mr. Audet seconded the motion.

**Vote:** Four – Yea. Mr. Given opposed. The motion carried.

(7:24) **2 Town Landing Rd. Carolie, Dwight & Lauren Herdrich** - Conditional Use under Section 6.2 & 5.22.1 for an addition and Accessory Dwelling Unit. Parcel U17-055, zoned RA.

Mr. Herdrich was present. He stated that he closed on the property yesterday. It is an existing 200 year old house which is nonconforming due to the 25' front yard setback to town landing road. He is proposing add another structure towards the water and have the original building become an accessory apartment building. The new building will be designated as the main building. The applicant's mother will be living in the accessory unit. The new building is within the setback requirements. The existing livable area is approximately 1100 sq. feet. The new is 3000 sq. feet. Both added together is 4127 square feet.

Mr. Meyer noted total livable area of primary structure. Mr. Brown reviewed application materials and confirmed how it should be calculated. The wrong square footage is used for a total area of 40% instead of 30%. It seems to be 52 square feet too large per Mr. Meyer.

The applicant note he did meet with Mr. Brown on the application.

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

Mr. Berry asked about how calculations are done and where units are to be located within the footprints.

Mr. Audet asked Mr. Brown if a dual application has been done before. One that Mr. Brown can think of 8.3.b design scale and bulk.

The applicant noted that height is almost the same as the house across the street which is also 3 stories and the pitch of the roofs is almost the same. The proposal is the same design as original house but with an increased pitch to fit in the family space necessary. It seems a better option than going out and toward the water. There is less footprint and is less expensive. The garage is there because there is an existing curb cut.

Mr. Keeler noted on the plan the height is less than required maximum. The height isn't so much an issue as the setback application. The deck railing is designed to be lower than the peak.

Applicant noted that is right next to Town Landing.

Mr. Keeler reviewed his interpretation of the ordinance in regard to the property.

Mr. Meyer commented on section 5.2.2.

Further discussion of how to calculate ensued.

The Applicant noted that he can take out the kitchen and build the structure simply as an accessory structure without the dwelling unit.

Mr. Givens noted a typographical error of the architect who is the applicant. This is a huge structure and the bulk is considerable. Applicant noted that he designed with this in mind.

Mr. Russell asked if he can vote on this to which Mr. Meyer responded no. Mr. Russell stated that if he could he feels it cannot be approved due to bulk and scale of the structure. It does not compliment the neighborhood. Section 8.3.d states it must enhance the value of neighboring property. It doesn't fit in. He is very familiar with the property as he lives in the area.

The applicant stated that he is an Architect Houses and Barnes with John Libby which is one of the highest end firms and feels it does fit in. He designed to compliment the market and a similar icon at the intersection of 2 roads instead of being just another cape. The tower is a nod to light houses of Maine. The style concern is a surprise response by the board as it is not an architectural review board. The board is only supposed to be reviewing under the rules by the board – their jurisdiction only.

Mr. Meyer referenced 8.3.b which is enlargement of structure. Item C pertains to accessory structure.

The applicant noted that he copied the existing structure design elements.

Mr. Berry feels that this is a word game and that the code doesn't permit. Is nonconforming due to setback requirements. The initial question is for expanding an existing single family dwelling. Can expand up to 40% to create an accessory dwelling unit. He doesn't have concern about bulk and scale of the building. He compared the proposed structure to an aerial view in the application materials noting that neighboring structures are in fact large. Should not base a decision on bulk. Also, 6.2 and 5.2 shouldn't be looked at the same time. The feels the board can't approve the accessory dwelling but the first application does seem to meet the required standards. These are absurd results from the existing language and the applicant should come back for an accessory dwelling unit once the structure is constructed.

Mr. Keeler asked how literally it should be read.

Mr. Audet stated he will vote against the application because it violates 8.3.b regarding bulk and scale compatibility. He feels there will be push back from the public due to bulk and space. This is his own personal view. If the property was closer to the water/wharf there would be a roomful of people present. The tower just doesn't fit.

Mr. Keeler stated that 6.2.b seems to fit in but under 8.3 he is a little hung up whether it meets the design scale and bulk. It may be perspective and the applicant offered to show a 3D model in which the tower doesn't appear taller than existing building from town landing. They may want to table to let the applicant prove that it does fit in. A site walk may be warranted. He is not concerned about the architecture but about the bulk of the building.

Mr. Audet feels that coming up the hill from town landing the structure will appear large. He is a proponent of tabling the item so that applicant can give more of a presentation.

Mr. Meyer indicated it may be calculated more specifically as numbers on the tax card may not be accurate. He is concerned in 5.22.2 that there can only be one main entrance and others must be subordinate. It appears to be two houses attached by a garage which is not the typical accessory dwelling unit they see. He is not fully satisfied with standards for an accessory dwelling unit. The applicant needs to convince him that bulk and space fit in.

Mr. Given asked Mr. Brown if a scenario has been presented in the past where the primary unit becomes secondary and a new primary created to which Mr. Brown responded no. The scale is a concern although it seems slightly exaggerated in renderings. This is a great design in the right location but doesn't fit in here. It isn't in keeping with general character of the existing structure at all, specifically the tower.

Mr. Meyer stated it doesn't fit in. Most significant is the tower. It is not compatible with the neighborhood and will stick out and have an adverse affect on property value in the area. The excess square footage problem is minor and could be worked out by possibly walling off or creating a utility room etc. Mr. Meyer explained that the applicant could withdraw the application and come back with modifications. He noted that if the application is denied it can't be heard with a similar application for a year.

Mr. Brown noted he could continue to the next meeting. Deadline is today for next months meeting.

**Motion:** Mr. Given made a motion to table the item. Mr. Audet seconded the motion.

**Vote:** Yea – Unanimous.

(8:43pm) **32 Casco Terrace. Casco Bay Woodworks, representing Harriet Hubbard.**  
Conditional Use under Section 6.9 for a tear and rebuild a porch. Parcel U17-033, zoned RA.

Justin of Casco Bay Woodworks was present on behalf of the applicant and reviewed the proposal.

Discussion ensued as to written permission from applicant to represent her. Mr. Brown confirmed he has spoken with applicant and a condition of written permission could be applied.

The project is to tearing down the porch and rebuild as the structural integrity has been compromised due to age. The existing is not worth repairing and needs to be removed in its entirety and rebuilt. There is no heat in it but it will be insulated as a 3 season porch.

**Public Input:** No one was present from the public to speak to this item. The applicant presented letters from 2 neighbors in support of the application. The Parents are third and the 4<sup>th</sup> abutter was away and couldn't be reached for a response.

Photos were presented. The roofline is the same and dimensions are the same as the existing porch. The setback to the road is required to be 10 feet and it is slightly closer to the road than that. That is why it is before the board to rebuild in the existing footprint.

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

Mr. Keeler asked a question about Mr. Brown's notes.

Mr. Russell stated he is in favor of the proposal but the submission criteria require the distance to the nearest structures on abutting properties be shown which it is not. He felt it should be noted.

Mr. Keeler asked which views the elevations represented are from. He stated that the drawings could have been a little clearer

**Motion:** Mr. Given made a motion for approval of the application as presented in the official record. Mr. Keeler seconded the motion. The proposed motion was conditioned upon proof that the agent has permission to speak on behalf of property owner.

**Vote:** Yea – Unanimous.

### **Other Business**

Mr. Brown had circulated an amended application completion checklist and the board would like to digest and discuss at the next meeting.

## **5. Adjournment**

The meeting adjourned at 9:00 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.*