

TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, January 25, 2011

MEMBERS PRESENT – Dennis Keeler (Vice-Chair), Jim Thibodeau, Willie Audet, Stan Given, Jonathan Berry (Associate), Don Russell (Associate)

MEMBERS ABSENT - Fred Jay Meyer (Chair)

STAFF PRESENT – Amanda Stearns, Community Development Director and Acting Code Enforcement Officer

1. **Call to Order**

The meeting was called to order at 6:34 pm.

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

- September 28, 2010: Jim Thibodeau moved to approve the minutes; Willie Audet seconded. Motion carried 4-0.
- October 26, 2010: Stan Given moved to approve the minutes; Jonathan Berry seconded. Motion carried 5-0.
- November 23, 2010: Willie Audet moved to approve the minutes as amended. Jim Thibodeau seconded. Motion carried 5-0.

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

Amanda said additional information has been submitted regarding lot coverage for several applications as well as additional information for the Greenstein application. She felt the applications are in order.

4. **Applications**

- a. **20 Whitney Road, Karen Haley** – Conditional Use under Section 6.2.a. for additions. Parcel U01-072, zoned RA.

Don Russell was appointed as a voting member.

Karen Haley presented her application. She is trying to move the garage over 4 feet, taking off the back corner, so she can gain an entryway and a full mudroom.

Public comment period opened; no public comment.

Jim Thibodeau said the proposed section as shown on the plan is the 4 foot extension to the garage; it would be over the setback if it were extended.

Ms. Haley said that was correct.

Jim Thibodeau said the plans show that the roofline does not extend over as well; he said the setback would be measured from the furthest point of the roof overhang, and not the building. If the roof over hung the building by 6 inches, that is where the setback would be taken from, even though the foundation and the wall were within the setback.

Ms. Haley said she understood.

Dennis Keeler said the Board received supplemental information with the coverage ratios.

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

b. **188 U.S Route One, Peoples United Bank**- Request for a Variance for a sign, Parcel U51-005, zoned SB1.

Dennis Keeler recused himself due to a conflict. Jim Thibodeau served as Chair in his absence.

Blake Danis of Architectural Graphics explained that they want to reface the existing sign as it stands to reflect the change of name of the bank.

Peter Murphy of Neokraft Signs confirmed that the Board has the most current sign design.

Jim Thibodeau clarified that they are not proposing any new sign, but just refacing what is existing.

Mr. Danis said that is in relation to the main sign; there will be new unbranded directional signs.

Don Russell said the proposed sign in the drawing is slightly shorter than the current one. It is 16 feet and not 16'6".

Amanda Stearns thought the application was a request for a variance to relocate the signs from the Route 1 right of way onto the property.

Mr. Danis said if they are not able to reface the sign, they will ask to move it back to the property line.

Amanda Stearns said the application submitted on Jan 13 was for relocating the existing ground signs only. There were not two variance requests submitted.

Jim Thibodeau asked if the Board would have to take two votes, one on the request to reface and the second, if the first doesn't pass, to reface and relocate.

Amanda Stearns clarified that the signs are currently within the State right of way, and would require DOT approval to be refaced. If the Board reviews and determines that refacing the sign within the right of way is an appropriate variance, she would recommend a condition of approval that it be approved by the DOT.

Jim Thibodeau thought they would need a legal opinion from Town Counsel on whether they can even approve them and whether they are grandfathered.

Jonathan Berry said they have been over this issue a couple of times, and it is very difficult to get past Section 5.13i, which states that "...*Nonconforming signs located within the public right of way shall not be permitted to be altered or relocated within the public right of way.*" He thought they had to move them. He was thoroughly confused by what the applicants were asking for at this point.

Don Russell stated that he is a customer of this bank; he felt there was no significant physical change with this proposed sign. He didn't feel this required any opinion by a lawyer or DOT; it is clearly grandfathered.

Jim Thibodeau thought it was more a matter of the directional signs being moved. He agreed with Jonathan Berry about 5.13i. He was also confused about the dual approach, and he wondered if the applicants wanted to reconsider what they are asking tonight.

Mr. Danis thought they would stick with the way they applied, namely to move the signs back and ask for a variance for the 15 foot setback.

Jim Thibodeau clarified that they would move all the signs out of the public right of way. He asked about the need for a variance.

Amanda Stearns said none of the signs would meet the 15 foot setback and so require a variance.

Willie Audet felt, due to the confusion on the applications, that this application should be deemed incomplete and tabled, in consideration of other applicants waiting.

Stan Given agreed with Willie Audet, that they needed to get it crystal clear what they are dealing with before they spend any more time on it.

Amanda Stearns clarified that all of the signs are currently in the State right of way, and all of them would be moved to the property, but none of them would meet the 15 foot setback.

Jonathan Berry asked if it is certain where the DOT right of way is on this property. The last time they discussed this issue, it was raised that the right of way broadens and shrinks in various areas in that location.

Amanda Stearns said the survey the applicant submitted was stamped by a surveyor and it referred to rebar that was located. Typically they would rely on that as a proper representation of the line.

Jim Thibodeau disclosed that his company did the survey. He didn't realize it previously. He recused himself from voting but continued to serve as chair.

Mike Stoddard of People's United Bank asked if the large sign is grandfathered if they just reface it.

Amanda Stearns explained that the ordinance does not allow any sign within the public right of way to be physically altered in any way. She felt that the intent was that non-conforming uses, including signs, should evolve out of being non-conforming. Secondly, once you choose to relocate the sign, it is required to meet the minimum setback, which is 15 feet from the property line. There is no information submitted with this application as to why they cannot meet the setback.

Don Russell felt that if they just changed the lettering, he didn't feel that was a physical alteration.

Amanda Stearns said they can bag the sign with a temporary sign for 60 days. They are not talking about simply painting the existing sign, but completely changing it, including the structure.

Don Russell thought it could be approved if they were.

Mr. Danis said the proposed sign would use the existing structure; they just want to change the name of the bank and the colors of the sign. For clarity, he said they would move forward with the application as submitted, with the signs being moved out of the public right of way.

Mr. Murphy said their application is looking for relief from the 15 foot setback. If they were to install the signs in conformance with the setback, they would be within the paved travel area.

Stan Given clarified that the application says the signs would be relocated "into" the right of way, and not "out of" and the Board is not in the business of amending applications at the meeting. They have to go with what is presented to them.

Jonathan Berry said the application presented an entirely different analysis than what they are asking for now. He felt the Board is not comfortable doing a different analysis on the fly.

Jim Thibodeau pointed out that the plan submitted does show where the existing signs are, and where the proposed signs are. Even though the wording is incorrect, the plan is clear that they intend to move all the signs.

Don Russell agreed that it is shown correctly on the plan; the change of wording on the application is miniscule.

Willie Audet felt the Board spent too much time on incomplete applications and applications amended on the fly. He didn't think they were doing their job by allowing this.

Public comment period opened; no public comment.

Stan Given said he had a tough time figuring out what they were asking for, with two applications in front of them. He didn't feel the Board has had enough time to review what is really being asked here. Variances are very difficult to review. He pointed out that the scaled plans show the proposed sign as smaller than the existing sign, but in the diagram they are shown as the same.

Mr. Danis said they asked that the new sign be removed from the packet, and replaced with the reface of the sign.

Amanda Stearns said they submitted an application, and then submitted a new application on Jan 13. Staff sent the Board everything they had.

Stan Given said he needed a cleaner application.

Willie Audet moved to table the application until next month; Stan Given seconded.

Both Jonathan Berry and Don Russell were appointed as voting members.

Jonathan Berry wondered if tabling the application was the appropriate action or if the Board should deem it incomplete and send it back to the applicant.

Willie Audet explained that tabling is to the benefit of the applicant, to allow them to submit new information as the deadline for next month's meeting was today.

Jonathan Berry pointed out that this is not just a battle of semantics; incompleteness of applications has become an issue that the Board has had to deal with, and as a result the orders are confusing. When abutters, who are notified prior to the meeting, come in to review applications, they rely on the fact that the Board will review the same information. The Board is asked to review applications as narrowly as possible.

Motion carried 4-0.

c. 13 Payson Street, Joseph & Aleece Herlihy- Conditional Use under Section 6.2 for an addition. Parcel U01-028, zoned RA.

Aleece Herlihy and Adam Rosenbaum of CSI Builders explained that they are hoping to put dormers on the front and back, conforming to ordinance. Lot coverage will not change as a result of the project.

Dennis Keeler asked if this should be 6.2a or 6.2b

Amanda Stearns said 6.2b, because the dormer to the west will fall within the setback, but not within the 10 feet. 6.2a requires that they meet all the standard setbacks, in this case 20 feet. The building violates the setback, but they are pulling the dormer back to meet the 10 feet allowed under section 6.2b.

Public comment period opened; no public comment.

Jonathan Berry was appointed as a voting member.

Stan Given asked to see the elevations. Mr. Rosenbaum presented the elevations to the Board, along with some photos of the existing home.

Jim Thibodeau thought it looked like they have zero clearance on that 20 foot mark.

Mr. Rosenbaum said they are not going to have any overhang from the soffit. They have that 20 foot mark indicated on the property, so that they do not violate it.

Ms. Herlihy said they have been very mindful of that mark and the ordinance.

Dennis Keeler asked about the red circles on the plans. Mr. Rosenbaum said that the red circle indicates the area within which they cannot build.

Dennis Keeler asked about the red hatched area on the plan. Mr. Rosenbaum said that is the existing single-story roof.

Dennis Keeler said they are not coming any closer to the property line with the dormer on the other two sides. Mr. Rosenbaum said that is correct.

Willie Audet asked about the west elevation where a “future sunroom” is indicated on the plan.

Ms. Herlihy said that was a dream they might do at a later date with another application. Mr. Rosenbaum said it was an exercise to see what might be possible in the future.

Dennis Keeler said that any motion to approve should be clear that it doesn't include the sunroom.

Stan Given moved to approve the application under 6.2b, for an addition without a sunroom; Jonathan Berry seconded. Motion carried 5-0.

d. 11 Phillips Road, Usha K. Reddi- Conditional Use under Section 6.2 for an addition. Parcel U01-054, zoned RA.

Amanda Stearns clarified that this application was a 6.2b.

Usha Reddi presented her application. This project was approved over a year ago in a slightly different fashion. They have a new survey and redrew the floor plan so that they are within the setbacks.

Jodi Delany of Whipple Callender architects said this plan is very similar in idea and intent to the previous application. They have one nonconforming condition, which was present in both schemes. They have worked to keep their lot coverage to the 20% allowed.

Public comment period opened; no public comment.

Don Russell was appointed as a voting member.

Jim Thibodeau asked why this is a 6.2b.

Amanda Stearns said it does not meet the 20 foot setback on the side where they are expanding. They are continuing along the existing 15 foot line.

Jim Thibodeau observed that they changed a couple of dimensions.

Mr. Delany said yes, they are meeting the 15'2" existing dimension. The 46'9" in the rear is an existing dimension, and the 21' dimension on the other side is compliant.

Amanda Stearns asked that a condition be added to any approval that a copy of the boundary survey handed out to the Board be submitted to the Codes office.

Stan Given asked several questions related to the elevations. Mr. Delany clarified what each one represented.

Dennis Keeler asked if the crosshatched “proposed addition” is the same from previously. Mr. Delany said it got smaller due to the setbacks, but not by much. It is the same idea.

Dennis Keeler said they are bringing it out to the wall of the house. They are not bringing it any closer to the setback. Mr. Delany said that was correct; they are staying 10" away from the setback to allow for a decent overhang.

Dennis Keeler asked if they are within 20 feet of any existing building. Mr. Delany didn't have that measurement with him.

Dennis Keeler said they have the 14'3" from the existing structure to the lot line.

Mr. Delany said that was changed to 15'2" due to the survey. The previous dimension was worked by eye and a mortgage map. He would be glad to provide a field dimension along with the survey he provides to the Town.

Dennis Keeler said he would like that confirmation.

Ms. Reddi said the new survey showed that they actually own a few feet into the property of the building to the left of the house.

Dennis Keeler asked about what they are doing out front with the overhang. Mr. Delany said they are building a small roof over the existing stoop, which is taken into account in the coverage calculation.

Dennis Keeler asked what is there now. Mr. Delany said there are steps and a landing.

Dennis Keeler asked about extending closer to the line than an existing structure.

Amanda Stearns said that would include stairs. A granite slab would not be included, but granite or wood stairs would count as a structure.

Dennis Keeler suggested they remove the request for approval under 8.5. He felt the application could be approved under 6.2b.

Mr. Delany said he would submit the survey, done by James Nedeau, to the office. It would back up his dimensions.

Don Russell moved to approve the application under 6.2b as shown on the revised plan dated 1/21/11 with the condition that the survey will be provided to the office; Willie Audet seconded.

Dennis Keeler suggested a condition that they certify to staff's satisfaction that they meet the 20 feet.

Don Russell and Willie Audet agreed to the amendment to the motion.

Motion carried 5-0.

- e. **2 Laurel Lane, Elizabeth T. Greenstein-** Conditional Use application under Section 6.2, 6.9, & 6.11 for an addition. Parcel U09-034, zoned RA and LR.

Tony McDonald represented Ms. Greenstein as she was not able to be present tonight. A letter from Ms. Greenstein was submitted allowing him to serve as her representative.

Dennis Keeler disclosed that Mr. McDonald contacted him with procedural questions as to deadline and process. He didn't feel that this qualified as a conflict.

Mr. McDonald explained that, at the September meeting, Ms. Greenstein presented a set of building plans to the Board along with a mortgage survey that showed no encroachment into building setbacks. The Board approved that request as submitted. As part of creating the landscape plan requested by the Board, Ms. Greenstein contracted for a boundary survey. This survey showed that in fact the building does encroach on the setback and so they are back before the Board for an approval under 6.2b. There is encroachment on the side line and the front line. The eave line will not be expanded any further than it currently is. There is a new porch proposed, which will go into the setback, but it will go into the setback less than the existing entry way and porch, so it reduces the encroachment from 42 sq feet to 22 sq feet in that area. He had a letter from Alanna Peterkin of 32 Edgewater Drive supporting this proposal, which he read to the Board. He submitted a copy for the record. He passed plans to the Board that showed the

encroachment. The encroachment on the side line will remain exactly as it is, and it conforms to the 10 foot requirement of 6.2b. The current entry way/porch is 79 sq feet in size, and 42 feet of it encroaches. The proposed porch in that location will be 72 sq feet, but will only encroach by 22 feet into the setback.

Amanda Stearns pointed out that there has been a revision between the survey that was first submitted, and the survey that Mr. McDonald handed the Board. The first survey submitted showed the house as violating the front setback. The survey handed out tonight shows a revised front boundary.

Mr. McDonald said the first survey was dated December 7 and was sent with a letter to Justin Brown, explaining the need for a revision. There was a recorded plan done in 1934 which was somewhat vague as to the lines; there was another survey, referred to as the Bates survey, which was not recorded but appears to tie in with reality better. There are dimensions given in Mr. Cody's deed for the property across the street that tie in with the Bates survey.

Amanda Stearns said the newer survey doesn't note under the revision notes that they altered the right of way location. The plan that was submitted in the application packet is the revised plan. The plan originally submitted was used by staff to discuss the need for them to apply to the BZA. She hadn't seen until tonight the plan that showed what they are doing with the porch. According to this plan, the only portion of the home that would encroach is the southwest corner by 7".

Public comment period opened.

Carl Gerke, immediate abutter, said he thought a condition of the September approval was that a survey be submitted. It was not a voluntary thing that was done as part of a landscaping plan. The front encroachment of the porch may be less than what is there now, but what is there now is not approved, filed or legal. He didn't think what was there now is relevant. The house is not there now. His understanding is that there is a different set of rules for a house that is there and a house that has been removed. He thought they needed to conform to the ordinance once they tore down the house. He felt it was important that the ordinance be applied.

Don Russell asked if Mr. Gerke disapproved of this proposal.

Mr. Gerke said he isn't here to object but he wasn't in favor of it. He would disapprove of it if it doesn't meet the ordinance. They are not proposing to make the new structure any closer to his house than the former structure, though they are making the roof higher. It was a point of contention that the non-vegetated surfaces be brought into compliance. He said he and his wife commissioned the Bates survey; it wasn't recorded because it would cost more to record it. Mr. Bates did place some pins.

Jonathan Berry said Mr. Gerke referenced a condition; in reviewing the minutes he didn't see a condition.

Mr. Gerke clarified that the applicant agreed to furnish a survey; it may not have been imposed as a condition.

Jonathan Berry said the only condition was that it be confirmed that the lot meet the 20% non-vegetated standard, and that the storage area be maintained as storage.

Amanda Stearns read the official conditions. She reported that there was an error in the official notice of decision issued by the Code Office; an additional condition was imposed to remove all the walkways and non-pervious surface between the homes, allowing for a narrow walkway to service the home. That condition was not included in the official notice of action, but the notice should be amended to reflect that.

Catherine Field, of 4 Laurel Lane, was vehemently opposed to the expansion of the home beyond what is permitted by law. When she and her husband moved there, they looked at what the rules are. She felt the house is going to be 6-7 inches beyond what is allowed, closer to their home. With the raising of the roof,

they will be looking at a wall now, instead of a slanted roof. They looked at expanding their home and discovered that it wouldn't be permitted; she wondered why her neighbor would now be allowed to do it. The lots in the neighborhood are small, and 20 sq feet makes a difference. She doesn't want to look at the 20 feet that her neighbor got that she couldn't. This would change the character of the neighborhood. A neighbor on the other side is also planning to rip down their historic cottage and will be looking at building a bigger home.

Don Russell asked if she is more against the proximity or that the home will be higher.

Ms. Field objected to both sides being permitted, the 6-7 inches on their side as well as the porch. She would have liked a grand entryway as well, but they couldn't have it, so why should Ms. Greenstein.

Mr. McDonald said the survey was not a condition. They did it to show what the landscaping and hardscaping is. He disagreed that the porch was not legal; it exists and is grandfathered, and he felt it was as legal as the rest of the structure.

Don Russell asked if it is torn down. Mr. McDonald said yes, everything is gone. They had already started demolition when the survey was completed.

Don Russell thought if it is gone, it's gone.

Amanda Stearns said no, the Board approved a tear down and rebuild under section 6.9 which has less restrictive standards than 6.2b.

Mr. McDonald said the intention was to remove all the hardscaping between the two homes and replace it with a small path. The project proposed is not beyond the scope of the law; this is a renovation of an existing building without increasing any of the encroachments any further than they actually are. Nothing is increasing here; at the line between 2 and 4 Laurel Lane it is exactly the same. On the front it is decreasing the encroachment. They are not increasing any encroachment.

Jim Thibodeau said they are not making anything more non-conforming. They are only about 6" off of the southwest corner. He wondered why, since the building has been torn down, they cannot move the building to make it conforming.

Mr. McDonald said the foundation has already been poured.

Dennis Keeler asked what was in front before.

Mr. McDonald said that is indicated by the yellow highlighted area on the plan he presented tonight. He explained the details of that area. There was a stoop, then two steps down to a deck, and then steps down to the ground.

Dennis Keeler asked if there was a roof over it. Mr. McDonald said the shed area had a roof over it. He wasn't sure about the rest of it.

Jim Thibodeau asked what the dimension was from the new porch to the lot line. Buell Heminway, architect, said the new porch is 6.5x11.

Jim Thibodeau asked what the setback from the property line is from Laurel Lane to the proposed porch.

Mr. McDonald said it is 23 feet. It will encroach by 2 feet.

Stan Given asked if the proposed porch has a roof. Mr. Heminway said yes.

Dennis Keeler asked if the porch was approved in September.

Amanda Stearns said a porch was approved. It was approved as a tear down and rebuild in the existing footprint, and she believed that it included a front entryway.

Mr. Gerke said his understanding was that the difference between now and then was that there is now a survey that shows that they are not within the setback.

Jean Reardon of 23 Edgewater lives across the street from the property and said there was never a roof over the front porch/stoop. It was a homemade little deck, and there was no roof.

Public comment period closed.

Stan Given asked if the footprint of the porch included steps. Mr. Heminway said it does.

Dennis Keeler asked if the last step is within the 6.5 feet. Mr. Heminway said yes, and it would still be under cover.

Dennis Keeler asked for clarification that in September they were under Section 6.9.

Amanda Stearns said yes, as well as Section 6.11 due to the shoreland zone. She explained that the first survey showed an encroachment of the building on the front setback and not just of the porch, so staff determined that the best course of action would be for the applicant to come back to the Board to determine whether the encroachment required them to amend their approval. The original approval was based on a mortgage plot plan and supposedly met all the setbacks; when the survey was done what the applicant had represented to the Board was no longer fact. Therefore it seemed prudent to have the applicant come back to the Board with the correct information.

Dennis Keeler said that being in the setback or not is not an issue for 6.9.

Amanda said Section 6.9 does permit a reconstructed building to go to a minimum setback of 10 feet while meeting the minimum of 20 feet between buildings. If the revised plan had been presented to the Board at the original approval, it would meet all the criteria of 6.9. The existing front structures are considered part of the structure and have to meet setbacks. A deck and a porch are treated the same with regard to setbacks or non-conformity; they are required to meet all setback requirements. If they have historically been non-conforming then they use that as part of the dimension to determine what the non-conforming setback is.

Dennis Keeler clarified that the application was brought back to the Board to see the new survey, and not because it did not conform to 6.9.

Amanda Stearns said the encroachment to the southwest is something they were unaware of.

Jim Thibodeau said the architect's plan showed the setback is beyond what the proposed porch is. He pointed out that the proposed porch does not conform with the footprint of the former porch in terms of width.

Amanda Stearns said under section 6.9 they can go to 10 feet.

Jim Thibodeau wondered if the Board would have said no to this application if they had seen that.

Amanda Stearns said her opinion is that the Board is obligated to approve the application if they meet the standards of 6.9, along with the criteria of 8.3. As it was originally presented, everything met the setbacks.

Jonathan Berry felt, under 6.9, the property owner could have built this porch all the way to the 10 foot setback. They have instead shrunk it. All of these lots are offensive to the code. He felt that, under 6.9, they are obligated to say that it meets the requirements.

Willie Audet moved to approve the application under 6.9; Jim Thibodeau seconded for purposes of discussion and wondered if they needed to approve under section 6.11 as well.

Willie Audet amended the motion to include approval under 6.11. Jim Thibodeau seconded the amendment.

Dennis Keeler asked that the two conditions from September be carried forward.

Willie Audet amended his motion to include that the existing conditions that were placed on September 29, 2010 would remain in force. Jim Thibodeau seconded the amendment.

Don Russell was a voting member.

Motion carried 4-1 (Given opposed).

- f. **17 Middle Road, Amy Theisen-** Conditional Use under Section 5.22.1 for an Accessory Dwelling Unit. Parcel R04-050, zoned RAm.

Item tabled prior to the hearing.

5. Other Business

Jonathan Berry asked if a Board approval is transferable to a new owner.

Amanda Stearns said that, unless it is indicated that it is not transferable, a variance and a conditional use are both transferable. A disability variance is not transferable, and home occupations may have further restrictions. The ordinance would have to state that the approval is strictly for the owner; other than that the approval is transferable. As long as the project is identical to that approved, it is transferable. Approvals do expire; projects must be started within a year, i.e. a permit must be pulled, and substantially completed within two years.

Jim Thibodeau asked if 6.9 had the same time limit. Amanda Stearns said yes; it is a conditional use.

Jonathan Berry was concerned with a project that had received approval and has not begun, but it is being marketed for sale with the approval.

Amanda Stearns said they do not follow real estate agents. Staff would review any approvals when an application for a building permit was submitted, to make sure they were still valid.

Jonathan Berry was concerned with the allowance on late submission of materials. Abutters who have received notices and come to the town to review the materials rely on that being what is approved.

The Board discussed the issues of submission of materials, incomplete applications, minimum standards for materials and the submission deadline, including whether they should have rules of procedure.

Amanda Stearns offered to draft a simple checklist and distribute it for comment by each board member. She would collect their comments.

Dennis Keeler suggested a focus on some standards for submitted materials, and clarification on deadlines and late submissions.

Meeting adjourned 9:26 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary