# TOWN OF FALMOUTH Board of Zoning Appeals Minutes Tuesday, March 29, 2011

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

**MEMBERS ABSENT** – Dennis Keeler, Jim Thibodeau

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

Jon Berry and Don Russell were appointed as voting members.

#### 1. Call to Order

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

- 2. Discussion and adoption the minutes of the previous hearing(s).
  - January 25, 2011: Willie Audet moved to approve; Stan Given seconded 4-0 (Meyer abstained)
  - February 22, 2011: Stan Given moved to approve; Jon Berry seconded. Motion carried 4-0 (Audet abstained).
- 3. Discussion and finding that all applications presented for this hearing are complete.

The Board determined that all applications were complete.

## 4. Applications

**a. 40 Lowell Farm Rd, William & Janice Bennett**– Conditional Use under Section 6.11 to reconstruct a destroyed Single Family Dwelling Parcel Hl7-007, zoned RBm.

Bill Bennett presented his application. In 2008 he came before the Board for approval to demolish his house and build a new one according to the plans that are before the Board tonight. He held off on the project due to financial reasons. On January 26 of this year the house burned to the ground. The request tonight is for approval of the same project they submitted in 2008; that approval was only good for one year and has since expired. The old house was 18 feet away from the water; they felt they needed to move the structure back to be good stewards of Highland Lake.

Public comment period opened; no public comment.

Stan Given asked about drainage around the property; he wondered if this project would improve the drainage.

Mr. Bennett said they are planning on improving the drainage; the new house will be built up and runoff will not go into the Lake. The soil in the area is marine clay. They have owned the property for 7-8 years.

Stan Given asked if the new house would cause runoff onto abutters' property. Mr. Bennett said it would not. The goal is to slow down the water

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Stan Given asked if the existing setback is 18 feet. Mr. Bennett said it was. He wants to move the home back to 30 feet. He can only be 8 feet from the septic tank.

Stan Given asked how much higher the new structure will be. Mr. Bennett said the original home was 1 ½ stories on posts; the new home will be 2 stories on a foundation.

Stan Given asked if the first floor elevation is changing.

Mr. Bennett said he thought so, since he is putting in a foundation. He will have a mechanical room and storage in the basement, but the ceilings will be 6.5 feet high. He thought the old home was 18-20 feet tall; he thought the new one would be 23 feet.

Emery Pelletier, who will be doing the site work, said the plans call for a walk-out basement, so it will have an elevation of about 6 feet on the back of the home.

Stan Given asked if he is doing any modifications to the septic. Mr. Bennett said no. He thought it was sized for a 2 bedroom; the new home will be a 2 bedroom.

Jay Meyer observed that this application was noticed under section 6.11, but he wondered if it belonged under 6.5 a 2. This section provides for meeting the setback to the greatest practical extent. He asked if Justin Brown found that this plan met that criterion.

Justin Brown said it did in his opinion. If Mr. Bennett moved it any more he would have problems with the septic.

Jay Meyer asked about the 30% expansion limit. Justin Brown said in 2008 the shed had been added to the 30%. He wasn't sure why it was done that way.

Jay Meyer asked if he was close to the 30% volume.

Justin Brown did the calculations; the application was over the 30% by 166 square feet with the shed taken out. He wasn't sure why it was approved previously with the shed included. There was discussion in 2008 about how that shed applied, but there are no notes in the file about that.

Jay Meyer asked Mr. Bennett if he could reduce the square feet to meet that requirement. Mr. Bennett didn't know; he felt he would have to have the house totally redesigned to accommodate that. He thought the discussion in 2008 mandated that he remove the shed; he thought that since the shed was so close to the house, it could be included.

Justin Brown asked how far the shed is from the house. Mr. Bennett said it was about 12 feet.

Jay Meyer asked if the entire new structure will be within the shoreland zone. The footprint will actually be smaller than the original home.

Jon Berry asked if the shed issue was brought to the Town before the plans were drafted.

Mr. Bennett said yes, and the code officer told him that he could include it.

Jon Berry asked if they relied on that opinion before they drafted the design. Mr. Bennett said yes.

Willie Audet observed that the plan was approved in 2008 with that condition in place.

Jon Berry thought that the Town was *estopped* in this case; the applicant relied on information that the Town provided when he designed the application.

Willie Audet and Stan Given agreed.

Willie Audet moved to approve the application under 6.11; Jon Berry seconded.

Willie Audet noted that the Board had a letter from Jayne Butcher that was entered into the record.

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Jay Meyer said normally he would be concerned with the nonconformity but the expansion was consistent with the prior CEO's interpretation, which was previously approved by the board, and was substantially compliant. Motion carried 5-0.

**b. 77 Applegate Ln, Chuck Sanders-** Conditional Use under Section 6.2 for an addition. Parcel U59-010-030, zoned RA.

Mr. Sanders presented his application. They want to expand their condo. There is a patio that is 12x16 feet; the association allows people to use that patio to expand their footprint. They want to expand by 172 square feet and improve the attic, making it two bedrooms and a bath. This has been done before in these condos.

Don Russell asked if the Applegate Homeowners Association has approved this change.

Mr. Sanders said yes; the approval is in the Board's packets.

Public comment period opened; no public comment.

Stan Given moved to approve the application under 6.2; Don Russell seconded. Motion carried 5-0.

**c. 319 Blackstrap Rd, Thomas Griffin-**Conditional Use under Section 5.22.1 for an Accessory Dwelling Unit. Parcel R09-013-A, zoned FF.

Thomas Griffin presented his application. They want to put a dwelling unit in the second floor of the barn.

Public comment period opened; no public comment.

Stan Given asked about modifications to the septic. Mr. Griffin said it has already been done. They maxed out the leach bed.

Stan Given asked how many bedrooms the septic is rated for. Mr. Griffin wasn't sure; they had to add to the leach field to accommodate the extra bedroom.

Justin Brown indicated that it is rated for three bedrooms plus an in-law apartment.

Willie Audet asked what the temporary bedroom is for on the second floor of the barn. Mr. Griffin said it is for his daughter. Eventually that space will be added to the living room.

Jay Meyer said the applicant used a figure of 2352 square feet for the main house, and he asked what made up that number.

Mr. Griffin said that is the first and second floor.

Jay Meyer said the tax card shows just a single story home.

Willie Audet said the tax card shows 1872 square feet of gross living area. Mr. Griffin said he went by floor area.

Justin Brown explained that the unfinished basement area had been added into the calculations. The finished area is 1470 square feet, which would reduce the allowable square footage of the accessory dwelling to 588. Mr. Griffin is proposing 680 square feet.

Mr. Griffin said the ordinance says that you go by the floor area. Section 2.71 says the definition of floor area is the sum in square feet as measured from the interior faces of the outside walls. He said living space is a different term.

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At Jay Meyer's request, Justin Brown confirmed that there is finished area in the basement, which is included in the square footage on the tax card.

Willie Audet asked if it is a raised ranch, with daylight in a portion of the basement. Mr. Griffin confirmed that.

Justin Brown pointed out that under 5.22.2 unfinished basements are excluded.

Mr. Griffin said that definition was for an "accessory apartment"; his application was for an accessory cottage under 5.22.3.

Willie Audet asked if the barn is attached to the home. Section 5.22.3 is for a detached structure. Mr. Griffin said there is a connecting 10 foot breezeway.

Justin Brown said that the buildings are not currently connected. That breezeway is not fully constructed. Mr. Griffin confirmed that. They want to build a breezeway at some point.

Jay Meyer thought it qualified as a cottage since the barn is not attached to the primary dwelling unit. He asked if any part of the second story of the main house is living area.

Mr. Griffin said no, there is no second floor in the main house. The living area is on the first floor and part of the basement.

Stan Given asked if the barn is attached to the garage. Mr. Griffin said there is a walkway.

Stan Given asked if there are walls and a covering. Mr. Griffin said he wants to do that. Currently, there is a floor and part of a wall. It is in the works.

Stan Given thought there was according to the photos. He looked at the aerial photo. Mr. Griffin said it is an old aerial photo; the barn is not on that photo.

Jay Meyer asked if he went to the knee walls, or the exterior walls, when he did the calculations. Mr. Griffin said he included all the areas except what is blacked out on the plans.

Jay Meyer asked if he included the stairs. Mr. Griffin thought he did.

Jay Meyer asked if he included anything on the first floor of the barn. Mr. Griffin said no.

Jay Meyer thought he was a little over on the 40% but excluding the stairs might save him.

Amanda Stearns observed that Mr. Griffin included the closet, which was exterior to the living space and could be excluded from the 40%.

Jay Meyer asked if Justin Brown had run the calculation of allowable square feet on what he thought was the actual square footage of the home. Justin Brown said he had; the square footage of the home is 1470, which would allow an accessory of 588 square feet. Mr. Griffin is proposing 680 square feet, which is a difference of 108 square feet.

Mr. Griffin said he went by the standards under accessory cottage, which has a different calculation.

Amanda Stearns said staff viewed it as an accessory cottage. While gross floor area is defined in the ordinance, gross floor area isn't the term that is used in 5.22. She looked to 5.22.1 for guidance as to how to determine floor area in this instance. Removal of the stairs and closet might reduce the size of the accessory unit. She wouldn't include those areas in the area of the accessory dwelling.

Jay Meyer thought they could have a condition that the accessory be limited to 40% of the main dwelling, which would allow him to either rework it, or redo the calculations.

Mr. Griffin asked what definition of floor area they are using.

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Jay Meyer said the ordinance defines gross floor area; this section calls out "floor area" and not "gross floor area". He would go by the description in 5.22.1, which was the same term for a related purpose.

Stan Given moved to approve the application under 5.22.2.

Jay Meyer suggested a condition on the approval that the area of the accessory unit be limited to 40% of the area of the primary dwelling unit.

Willie Audet said that would lay it on Justin Brown to determine the calculations.

Justin Brown said Mr. Griffin needed 92 square feet to make up the remainder of the 40%; the stairway might make that up. He'll have to do the measurements on site.

Stan Given agreed to Jay Meyer's condition. Willie Audet seconded the motion. Motion carried 5-0.

**d. 211 Middle Rd, Chris Atwood-** Conditional Use under Section 5.22.1 for an Accessory Dwelling Unit. Parcel U25-036, zoned RB.

Mr. Atwood presented his application. Chris Sanborn explained that the addition has already been built; they want to make it an accessory dwelling.

Public comment period opened; no public comment.

Stan Given was confused; he had two floor plans and he wondered which plan was for the house and which plan showed the addition. Mr. Sanborn indicated which plan was the just the addition and which showed the layout of the house.

Jay Meyer observed that the proposed accessory is 513 square feet. He asked if that is interior floor area. Mr. Sanborn said no, that is based on the exterior measurement.

Jay Meyer asked if the interior floor area would be at least 340 square feet. Mr. Sanborn said yes; those are 6" walls.

Jay Meyer asked about the increase to the septic. Mr. Sanborn said the house is on public sewer.

Don Russell moved to approve the application under 5.22.1; Willie Audet seconded. Motion carried 5-0.

**e. 22 Providence Ave, Robert & Donata Nelson-** Conditional Use under Section 6.2 for an addition. Parcel U04-040, zoned RA.

Mike Hays, architect, presented the application. They are asking to add dormers and an addition to an existing structure. The front setback will be maintained; the new dormers on the front will be inboard from the existing front of the house. The side dormers will be greater than 10 feet from the side setbacks. The setback of the new addition will be 59 feet from the rear lot line; the current garage is 53 feet from the rear. The current lot coverage is roughly 25%; the new addition will bring it to 27% lot coverage. The limit is 50%.

Public comment period opened; no public comment.

Stan Given asked if the addition in the rear will be one floor only. Mr. Hays said yes.

Mr. Hays provided a copy of the plans for the record.

Willie Audet observed that the applicant originally applied under 6.9, when he should have applied under 6.2.b. Justin Brown confirmed that.

Jay Meyer asked about the back dormer on the garage; he thought it would be tight to the line.

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Mr. Hays said the dormer would be 10'6" to the line; they have set it in.

Willie Audet moved to approve the application under 6.2. Stan Given seconded. Motion carried 5-0.

#### 5. Other Business

Jay Meyer reminded the Board members that email should not be forwarded to all members of the Board, as that would count as a deliberation. Emails should be sent to Justin Brown or Patrice Perrault in the Code Office, and they can then distribute to the Board if necessary.

#### **Election of Chair:**

Jon Berry moved to nominate Jay Meyer for Chair; Don Russell seconded. Motion carried 5-0.

The Board discussed the water view section of the ordinance, and how to address their concerns to the Council. Jay Meyer felt that, as a Board, they didn't have a suggestion to put to the full Council. Willie Audet suggested that Don Russell could contact an individual Councilor about the issue and ask for that person to sponsor the discussion on a Council agenda. Jon Berry agreed that would be the proper method to move this forward.

### 6. Adjourn

Meeting adjourned 8:08 pm.

Respectfully submitted,

Melissa Tryon Recording Secretary