

TOWN OF FALMOUTH
Board of Zoning Appeals
Minutes
Tuesday, February 28, 2012

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

MEMBERS ABSENT – none

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

1. Call to order:

The meeting was called to order at 6:30 pm.

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

Minutes were deferred until next month.

Jay Meyer changed the agenda order, moving the Aube application.

3. Completion of applications

Jay Meyer was concerned with the completeness of the Bradshaw application. The Board decided to proceed.

4. Applications

- a) 342 US RT 1 Saint Falmouth LLC-** Requesting Conditional Use under Section 8.3 for a wholesale distribution and storage warehouse. Parcel U53-002, zoned BP.

No one was at the meeting to present the application, so the item was held aside pending arrival of representation. Jay Meyer asked for public comment; there was none. The item was heard later in the meeting when the applicant's representative arrived.

- b) 105 Allen Ave Ext. Gary Aube-**Conditional Use under Section 6.2a for an addition. Parcel U31-009, zoned RB.

Gary Aube would like to remove the existing 13x15 foot addition and add a 13x20 foot addition with a full foundation under it, if he can. The existing addition is on the ground. The new addition would include a 10x18 attached porch. He is still within the setbacks but only has 23 feet in front.

Public comment period opened; no public comment.

Stan Given asked about the road frontage. He wondered if it would be a problem if the 170 feet as measured on the GIS map was inaccurate. Justin Brown said no.

Dennis Keeler asked about the plans. He assumed that the applicant is bringing it all the way across and rebuilding the back section.

Mr. Aube confirmed that.

Stan Given moved to approve the application. Jon Berry seconded. Motion carried 5-0.

c) 165 Middle Rd. Antonio and Lynnette Dipietro-Conditional Use under Section 8.3 for a roadside farm stand. Parcel U27-012, zoned RA.

Willie Audet recused himself as he is related to the Dipietros. Stan Given also recused himself as he is friends with the applicants.

Rudy Israel and Don Russell were appointed as voting members.

Mr. Dipietro would like to have approval for a roadside stand, as allowed under the ordinance amendment approved by the Council last night. The stand is allowed to have 300 sq. feet, and be 24 feet high, with setbacks of 10 feet in front, 50 feet on the side and 40 in the rear, on a minimum 20,000 sq foot lot with 120 feet of frontage. Their proposed building will actually meet the normal setbacks for the district; it will be located on a buildable lot.

Public comment period opened; no public comment.

Dennis Keeler reviewed the standards of the new ordinance in regards to outdoor display, parking, limitations on type of products sold, and minimum lot width. The Dipietros confirmed that they will conform to those standards. He asked about the dimensions of their stand.

Mr. Dipietro said that he was looking at 15x20; they are allowed 300 sq. feet of gross selling area inside. He provided the Board with a picture of what he is considering. He doesn't know what the construction will be. It will likely be on a slab. He will finalize his plans with Justin Brown later.

Dennis Keeler asked about outdoor sales. Mr. Dipietro confirmed that he will have outdoor sales.

Dennis Keeler asked about gross feet. He wondered if that includes unenclosed space outside.

Justin Brown thought they could include that in the 200 gross sq. feet of outdoor display. He pointed out that the roof overhang doesn't count toward that like it would in other areas of the ordinance.

Jay Meyer pointed out that the gross floor area is defined as the space inside the interior faces of the exterior walls.

Dennis Keeler thought that, without anything in front of the Board, the applicant will need to confirm with Justin Brown that he is keeping to the standards of 300 sq. feet interior gross floor area.

Mr. Dipietro clarified that the 300 sq. feet refers to selling area; someone could have a stand in their barn as long as they kept the selling area to 300 sq. feet.

Jay Meyer was concerned that the applicant didn't have specific plans, and the Board would have to rely on Justin Brown to approve those.

Dennis Keeler was concerned that "selling space" and "gross floor area" are not the same. He didn't want any misunderstandings.

Mr. Dipietro said he will review all this with Justin Brown. His stand will stay within the setbacks so that if anyone in the future wants to use it they won't be penalized. If the building is used for any other use it will need to come back for approval.

Rudy Israel wondered how the Board could approve this without a scaled drawing with proper dimensions, as required by the ordinance. Jay Meyer agreed; a scaled drawing of the lot and building with elevation plan is called for in the ordinance.

Mr. Dipietro thought that, since the requirements are clearly spelled out, it is easy to stay within them. It will be a single story building, and no taller than his 19 foot home.

Rudy Israel felt that plans should be submitted for the record.

Don Russell didn't see a problem with it. He has driven past the site.

Jay Meyer observed that there are no close neighbors. He asked about signage.

Mr. Dipietro said they are currently restricted to a sign on the building only. They are planning a 2x2 sign on the building as allowed. It isn't an issue if they don't have a sign now.

Jay Meyer asked about their operating season. Mr. Dipietro said they would be open from early spring through December. The hours would change; the stand would be open longer in spring and fall, less in the summer. They haven't planned that yet; there are no restrictions. It won't be open late at night.

Jay Meyer said the Board has to make sure they won't interfere with their neighbors' ability to enjoy their property. Mr. Dipietro didn't want to be restricted. He thought they would only be open during daylight hours. It might be different, but he didn't see them working in the dark.

Jay Meyer asked about lighting. Mr. Dipietro said they wouldn't need lights.

Jay Meyer asked about electrical and plumbing. Mr. Dipietro said they would have electrical but no plumbing. They will have minimal garbage since they compost all their vegetables.

Dennis Keeler asked if there would be a separate driveway. Mr. Dipietro said there is one there already; it is separate from the driveway to their home. It has a chain that goes across. They would likely put something better there once they are operational.

Jay Meyer was concerned about the vague plans, though he didn't think there would be a problem with compliance with the statute. The Board could ask them to come back with plans, or ask Justin Brown to confirm compliance with the ordinance. He would like to see some conditions on the approval regarding hours, lighting and open season.

Dennis Keeler thought applicants should be required to submit scaled drawings in the future, but owing to the fact that this is a new ordinance, he was inclined to be lenient here and allow it to go to Justin Brown. There is plenty of room here; on another lot it might be more troubling. He thought the applicants understand the dimensional requirements; he encouraged them to work closely with Justin Brown. He supported a condition that scaled drawings be submitted that meet the dimensional requirements.

Mr. Dipietro pointed out that he will have to submit those types of details when he applies for a building permit.

Dennis Keeler said the scaled drawings have to include lot lines, etc. and have to be well done. He would support a condition of no lighting in the parking lot. He wanted to allow a little flexibility on hours of operation; he agreed with daylight hours, but didn't want to be too stringent.

Mr. Dipietro didn't feel that they would be open much past 5pm. Farmers markets open early and close early. Since he isn't setting up anything he won't have to be there too early.

Jon Berry observed that they are supposed to be approving the use; the applicant will have to come back as part of the building permit application and submit scaled drawings. He thought if people had concerns about this, they would have been here to object. Absent any concerns, he didn't support additional conditions. If it becomes an issue, he felt it could be brought to the CEO.

Jay Meyer said this is a unique lot, close to the train tracks and the highway. The impact would be less here than it would on other RA lots.

Dennis Keeler moved to approve the application for conditional use, with the condition that the applicant shall submit scaled drawings to the CEO as required by the ordinance. Jon Berry seconded.

Jay Meyer pointed out that the scaled drawing would have to satisfy the dimensional requirements.

Motion carried 5-0.

d) 14 Whitney Rd. Paul & Sarah Davis-Conditional Use under Section 6.2b for an addition and garage. Parcel U01-058, zoned RA.

Dennis Keeler is a long-time friend of the Davises. He asked if the Board felt he should recuse himself; he was comfortable staying on the Board. The Board didn't require his recusal.

Ann Callender, representing the Davises, said they would like to expand the kitchen and add storage to the garage. It is 28 feet from the front property line to the house. The back corner of the garage is 9 feet from the line; they are looking to go to the 10 foot setback, leaving 1 foot to allow for overhang. The proposal would add 412 sq. feet which puts them at just under 25% lot coverage. They are looking to keep the same height as the existing ridge line. They would like to add dormers to the existing cape and a front stoop roof cover, the same size as the existing stoop. Most of the houses in the neighborhood are 1.5 to 2 story houses.

Public comment period opened; no public comment.

Stan Given asked about the setback of the shed on the abutting property; it is just across the property line. It is an 8x10 shed. Anyone can put something like it anywhere.

Dennis Keeler asked if the sections at the back of the house that stick out are new. Ms. Callender said both of those are there now.

Dennis Keeler asked about the stoop roof; Ms. Callender said it will not extend beyond the existing stairs.

Jay Meyer asked about the back of the existing garage that is 9 feet from the line. He asked if they would be expanding upward on that corner.

Ms. Callender said they may end up taking that down since the foundation is substandard. They may rebuild the foundation and replace that as it is.

Jay Meyer referred her to section 6.2b which states that no enlargement is permitted within 10 feet of the line; Ms. Callender said she was aware.

Jay Meyer asked about overhangs. Ms. Callender said they would hold the building to 11 feet to allow for a 1 foot overhang. Jay Meyer pointed out that they should be very careful of that 10 foot line.

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

e) 4 Avon Rd. Lisa Agnew-Conditional Use under Section 6.2a for a deck. Parcel U01-059, zoned RA.

Ms. Agnew was not present. Her application was heard later in the meeting.

f) 20 Winslow Rd. Carol Payson-Conditional Use under Section 6.2 for an addition. Parcel U02-033, zoned RA.

Steven Pondelis, architect, represented Ms. Payson. Ms. Payson was not able to be at the meeting tonight. He said they were here last August for approval of an addition. Ms. Payson has since decided that she would like more space, and is applying for an expansion of the original addition. They are still within the setbacks. They are looking for 77.25 additional sq. feet. It is still a single story addition.

Public comment period opened; no public comment.

Dennis Keeler asked about the location of the addition in relation to the elevations submitted.

Mr. Pondelis explained the elevations. Dennis Keeler asked if the new sunroom in the elevations is showing the new proposed expansion. Mr. Pondelis said yes, the sunroom is now coming out further toward the front of the house.

Dennis Keeler asked about the setback from the front yard line to the sunroom. Mr. Pondelis said it is 3.9" from the sunroom to the front of the house, which is 12" to the allowed setback line. He explained that this is a non-conforming house on the lot; the dashed line on the plans is their building envelope as determined by the CEO based on the non-conformity. Drawing L1 shows where the 25 foot setback line would be; the house itself encroaches on that.

Dennis Keeler asked if the interpretation was that since the proposed addition is sitting on the existing deck, it isn't extending any further.

Justin Brown said that was correct. They looked at the proposal and thought it met the 10 foot limit.

Dennis Keeler thought on the former application the proposed addition was sitting on top of the existing deck for its entire width. In this application, due to the curve of the deck, the sunroom is going into area that wasn't covered by the deck. He wondered if they could do that or if they could only go to the furthest intrusion and square off.

Justin Brown said the line was based on the intrusion into the setback. It is odd because it is a round deck. Mr. Pondelis said the rear line also dealt with the furthest point of intrusion of a non-conforming dwelling.

Jay Meyer asked if the existing structure under the proposed addition is a wooden deck. Mr. Pondelis said part of it is wood and part of it is terrace with foundation.

Jay Meyer said the entire area under the addition has latticework; he asked if there is a wooden structure underneath. Mr. Pondelis said there is a retaining wall to the back side of the house.

Jay Meyer asked about the construction of the round section of the deck. Mr. Pondelis said it is a stone terrace on some type of footing. They haven't excavated that yet.

Jay Meyer asked if there is any question whether it was a structure or natural materials. Justin Brown said since it is not set on the ground like a patio would be, it is a structure.

Jay Meyer asked about overhangs and whether the overhang will extend over the maximum allowed. Mr. Pondelis said they are allowing 12 inches for overhang.

Dennis Keeler moved to approve the application; Stan Given seconded. Motion carried 5-0.

g) 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.

William Bradshaw presented the Board with pictures of what the building looks like now, a rendition of what they would like it to become, and signatures they gathered in support of their proposal. They have received strong support from their neighbors and have spoken at length with several of them. They are taking an existing building and turning it into a seasonal ice cream shop that would blend harmoniously with the neighborhood. They are not planning on an ice cream window. The building has a history as a commercial use. It has been a grocery store and a ceramics shop. He felt this would be a benefit to the neighborhood.

Jay Meyer asked if the property owner was present; she was not. Mr. Bradshaw said they are under contract. Jay Meyer asked for a copy of the purchase and sale (P&S) agreement to be provided to staff. The realtor emailed it to staff.

Public comment period opened:

Susan Bean Matthews of Middle Rd. spoke on behalf of her father. She asked if the building would really be yellow with a purple door. She wondered if the Town would consider "no parking" signs to be installed in front of her house; she was concerned with people parking on the road. She was concerned with people walking across her yard to get to the store. She was concerned about signage and lighting; she didn't want light coming into her windows from either street lights or head lights. She was concerned about her father's quality of life. At Stan Given's request, she indicated the location of her home in relation to the building. She was concerned about the parking and felt she would have to put a hedge up.

Jay Meyer asked if the Falmouth ceramic shop was still in use; Ms. Matthews said no; she thought it was closed 8-9 years ago. Members of the public corrected her; they said it was 5 years ago.

Jay Meyer asked if the activity of the ceramics shop interfered with her quality of life.

Ms. Matthews said no; there was not a lot of traffic. There were only small classes, and those weren't held at night. There wasn't much traffic going in.

Sue Carpenter of Middle Rd. lives exactly across the road from this building. She has shared her concerns about traffic with the Bradshaws; she said they have been willing and open to working with the neighbors. She was concerned with the speed of traffic on Middle Rd. in that area. She was concerned with walking traffic and kids walking across Middle Rd. She wondered if the Town would put in a crosswalk. The road ramps down in front of the store and people get going very fast there. There are bicycle clubs that fly by this area. The road was widened recently but sidewalks were not installed. There are 3-4 houses, including hers, where people will park along the side of the road during yard sales. She was concerned with traffic exiting Pleasant Hill Rd and with traffic turning left into the store.

Don Russell asked about the speed limit on that section of the road.

Ms. Carpenter said it is 30 mph. There is a curve and a down hill grade. There are a fair amount of children in that area. There really wasn't any traffic in and out of the ceramic store. The cyclists do not stay in their lane. There will be 50-75 bicycles at a time when they go through.

Jay Meyer asked when the ceramics store was open. Ms. Carpenter never saw it functioning; she moved there in 2006. She has never seen any traffic go into there while she has been there.

Holly Maniatty of Middle Rd. was concerned with the cyclists; they take the whole road. The bus stop is right there and she was concerned about children and the traffic. She was concerned with the lights. She was concerned with the drainage; the road was just redone. She wondered about the opportunity for a take out window in the future. She referenced an accident during an ice storm where someone hit some of the houses along there. This is a new traffic pattern and there are no lights at this intersection. At Jay Meyer's request she said the bus stop is at the end of Pine Rd., where the shop would be located.

Stan Given asked about her concerns with drainage. Ms. Maniatty was concerned with impact to the city system. The road has water on it during melt.

Carl King of Middle Rd. lives across the street from the property. He has lived there for 10 years and was assured when he moved there that the ceramics shop was very low traffic during the day, with occasional classes at night maybe as late as 7 pm. There would be 3-5 cars at most that would stay for a couple hours and then leave. There was not a lot of outside lighting. In the last 5 years the owner hasn't even held classes. The impact was minimal when it was open. A corner store was discussed a few years back. He understood that the owner's exemption allowing her to have a business there was based on a ceramics shop, and any new business would have to abide by similar confines. This area of Middle Rd. is not a walking area; there are no sidewalks. He said the limit is 30 mph but people are often doing 40-45 mph in that area since they don't see the sign. He assumed the ice cream shop would be open until 9-10 pm at night in the summer. He thought people would spill outside in the summer. He was concerned with litter. It is a residential neighborhood. He didn't see a reason for this here; he felt there were plenty of other

places to get ice cream in the area. There are a fair number of kids in the area. They get the bus at the end of Pine Rd. It is a busy area. He is a cyclist; they do ride as a group along Middle Rd. because it is more residential and they don't have to worry about traffic as much as they do in Portland. At Stan Given's request he indicated the location of his home in relation to the property.

Dennis Keeler asked about activity in the building. Mr. King said there hasn't been any activity since the ceramics shop closed. 3-4 years ago the owner was trying to lease it out and a potential business owner was discussing the possibility of a corner store but that never happened.

Dale Howell of Middle Rd. pointed out that the speed limit is 30 mph from the bridge to Portland. The limit on Pleasant Hill Rd. is 25 mph, and that road has speed bumps. When Middle Rd. was redone, the residents were invited to a meeting with the Town to discuss the upgrades to the drainage. The neighbors at that meeting voted down the proposal for sidewalks. They wanted to have the bike lanes instead. He remembered when the building was built and was Melcher's Store. His concern was what type of use would best serve the community. He was in favor of an ice cream shop at the property.

Bob Wakefield used to live on Pine Rd. and also remembered Melcher's Store. He supported the ice cream shop. It will be a traffic issue no matter what comes in. The traffic will go by regardless of what goes into the building. He didn't feel it was incumbent on the applicants to be traffic cops. He felt it was on the Town to address that issue. The applicants will improve the building, which it needs.

Mary Stall of Clifton Rd. said she lived on Middle Rd. when her children were young. Middle Rd. has always been a busy highway and her children were never allowed on it. The property has a parking lot that holds 12 cars. She didn't feel cars would have to park on the street. She felt this would be a great addition to the neighborhood. Her neighbors on Clifton Rd. support this.

Nancy King of Middle Rd. said the light on the building shone into her home across the street when the ceramic shop was open. She felt this business would impact her life in her home. The curve in the road is exactly where the property sits. By the time people come around the curve they won't see the shop. She felt people coming from Portland to Falmouth would only see the ice cream shop after they pass the building and they would turn around to come back to it. She felt there would be people braking and there would be accidents. She said it was hard to pull out of her driveway as it is now with the traffic, and it would get worse with the shop. The parking lot does not house 12 vehicles. She said they would be lucky to get 5 cars at most. There is only one entrance to the lot. She felt they would have to reconstruct the parking lot, and was concerned with the impact to the newly redone Middle Rd. She was concerned with the traffic on the curve; she felt there would be accidents.

Jay Meyer asked about the level of activity at the ceramic shop.

Ms. King felt it was operational maybe 2 days a week. There was a big florescent light on the building over the front windows. She could see the light shining into her home through the drapes. The traffic level was very low. There has been no business in the building since 2006. She was concerned about what would happen if the proposed business closed; she wondered whether an approval would open the door for other business at the site and if so, what kind.

Public comment period closed.

Don Russell thought it was a good use. If there is a traffic problem Public Works can address it with signs and such. He understood Ms. King's concerns, but property owners have rights too.

Jay Meyer said that the Board received a letter from Douglas and Camille Baker in support of the shop.

Rudy Israel asked about the applicants' plans for access and egress into the lot given the geometry of the curve.

Mr. Bradshaw said the application included a hand drawn diagram detailing what he felt a suitable upgrade to the parking lot would be. He has discussed this issue with Jay Reynolds, Director of Public Works. If they have to do more than what is in the application, they will have it professionally designed. He is in construction and is familiar with plans, but he is not an engineer or architect. He thought this meeting was about use, and so wasn't ready to provide that additional information. A detailed site plan can be provided if it is necessary. He thought the parking lot will hold 8 cars; he has measured it.

Stan Given asked about planned hours of operation.

Mr. Bradshaw said they plan to be open April-September, 7 days a week, from 12-10pm depending on the season. It may be open less in the spring. It will be open during part of the school year.

Stan Given said they have to go before the Planning Board to address parking. He wondered if they would have to address lighting, parking on the street, litter etc. He had a lot of concern with traffic there with the curve. He was concerned with line of sight. He was concerned with the shop being open until 10pm in a residential neighborhood.

Dennis Keeler asked why some of the materials requested in the ordinance were not submitted.

Justin Brown said he spoke with the applicant and his main concern was traffic and parking. If this goes to Planning Board they will request professional plans.

Dennis Keeler thought they wouldn't have to go to Planning unless they do modifications to the parking.

Justin Brown said that was correct.

Dennis Keeler asked why they didn't submit more information.

Mr. Bradshaw said the drawing was his suggestion for the parking. They filled out the application on the day it was due to get to this meeting. He had the impression that this would be sufficient at this stage. His understanding was that the project would trigger site plan review by the Planning Board.

Dennis Keeler said conditional use requires that they demonstrate that the use "*will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, light or glare*" and "*will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion*". These are all concerns that have been raised by the neighbors but are not addressed by the application materials. He asked if they could address these issues.

Mr. Bradshaw said 10pm is not written in stone. They are not planning on more lighting than what is already there and if what is there is offensive, they don't need that much. He felt the safety of pedestrians and the traffic issue is up to the police department. The required 300 feet of sight line is there and he could prove that; he didn't know that he would be required to do that at this stage.

Ms. Bradshaw said they are planning on the whole thing being inside, so there will be one light inside, with perhaps one light on the sign and another over the door. It will not be a lit parking lot. There is a street light that lights up the area, but that isn't on their property. Customer service will be inside. They had thought of having outside service, since they had that at their previous locations, but felt that the outside space at this location was better used for parking.

Dennis Keeler asked about dotted lines on the plan.

Mr. Bradshaw said that showed pavement. He is looking at reestablishing a previous curb cut to allow for two curb cuts on the property. Another area of dotted lines indicated an area of grass.

Willie Audet asked if they planned on living at the property. Mr. Bradshaw said no, the second floor would be used as a rental.

Willie Audet asked about section 6.6. He said the ceramic shop has been discontinued since 2006.

Justin Brown said while it hasn't been functioning as a ceramic store for a number of years, ceramics are still stored there. It wasn't discontinued since the use hasn't changed. It is still a ceramics store, the store is just closed.

Willie Audet was concerned about the impact to the neighbors. He drives Middle Rd. every day. It is a fairly sharp corner, but is patrolled by the Police Department daily. He thought, if they are open until 10 pm, they had to provide a safe lighting level for people to get to their cars and drive out. He thought some type of post lights would have to be installed. He didn't see 12 cars in this parking lot; he thought they could get 5-6 at most. He wondered if Public Works would allow the other curb cut to be reopened. He said an ice cream shop is an intensive use; he was involved in the Beals Ice Cream renovation of an old, dilapidated building on Veranda St. and was familiar with the type of use, though he wondered if they would see a lot of use on Middle Rd. late at night. There isn't a lot of traffic on Middle Rd. at night. The ceramics shop had very little traffic. While the building appears suited to a commercial use, he thought they had to consider what would be appropriate there in regards to the neighborhood, traffic, etc. He pointed out that the letter they received in support was written by a professional realtor with 33 years of experience, and it stated that residential properties do not benefit having adjacent commercial properties.

Jon Berry asked if the P&S had a tight deadline. Ms. Bradshaw said that it is contingent on zoning. If they can't do this, they won't buy it and it will continue to be vacant.

Jon Berry asked if there was a timed deadline in the P&S for this to be accomplished. Ann Cinchette, the realtor for the Bradshaws discussed the contract. They are waiting on the bank approval of the short sale. There is a timeline.

Jon Berry said it is an issue of fairness. He wondered if the applicant would consider tabling until the next meeting to address the issues that have been raised. He said they need specific answers for the conditional use criteria.

Mr. Bradshaw was in favor of tabling the application to allow them to put together more information.

Jay Meyer asked about their plans for signage. Ms. Bradshaw said there is a post by the road with two lights where she thought a sign was hung. She thought it would be good to have a sign there. Their rendering shows a sign on the building.

Stan Given said the property tax card references the ceramics shop and lists it as "closed". He asked about a BZA application referenced on the tax card for the property in August 2006.

Justin Brown said that was a submittal for a change of use; it was tabled and never followed up on.

Stan Given asked if the owner is being taxed for personal property for the commercial equipment; this could speak to whether it is a discontinued use. Justin Brown would check on it.

Stan Given asked if they would be serving any other food beyond ice cream. Ms. Bradshaw said they are not planning anything else.

Stan Given asked if there was any control on what is sold there. Justin Brown thought limiting them to a certain use in the conditions would be applicable; selling sandwiches would require them to come back.

Stan Given asked about the building and the apartment on the second floor. He asked if there was a main house. Mr. Bradshaw said it is an 1100 sq. feet rectangular building; they want to rent out the apartment on the second floor. The building was a convenience store. The area on the back is a loading dock.

Don Russell read section 6.4 which addresses changing a non-conforming use to another non-conforming use. He felt there was no question that this application fits this category.

Jay Meyer pointed out that the proposed use must be an improvement over the prior use, based on the criteria.

Stan Given argued that there might be a detrimental impact due to traffic with this project and if so it wouldn't be an improvement.

Jon Berry was of two minds; he heard the neighbors concerns, but this is a great opportunity for the neighborhood to improve a distressed property that he didn't think anyone would purchase as a residence. The traffic problem already exists. He didn't think the project creates the problem. It could perhaps exacerbate it, but the Police are down there all the time. That is not the burden of the applicants. He felt the Town should have addressed that already. He had a hard time reconciling having approved a farm stand ¾ mile up the road without any objection while this business meets significant objection. He felt it was worth giving them time to answer the questions raised.

Willie Audet thought the biggest hurdle was 6.6; he didn't think it could qualify. The ceramics shop has been closed. He thought the property would lend itself to all kinds of other different uses. He had experience with ice cream shops; it is intense and there is a lot of coming and going. The intensity of a ceramics shop was very low. In response to Jon Berry, he said the farm stand is on a long stretch of road with good sight lines and very little impact on anyone else. He wondered if they could operate a small ice cream shop as a home occupation and live in the apartment.

Dennis Keeler shared Willie Audet's concern with 6.6; they have to analyze whether they have a discontinued use. With regards to section 8.3, there have been a lot of concerns raised with regards to traffic and noise, and he didn't feel that the applicants had submitted sufficient material to address those. He thought the Board should discuss the issue of 6.6 before the applicants move forward in putting together more information. He felt a store that has been closed for 5-6 years is discontinued. According to judicial practice, nonconforming uses are to be eliminated as soon as is constitutionally practical, and one of the methods is discontinuance. He didn't think stored or abandoned ceramics in the store preserved the use. He felt the farm stand was different; it wasn't a non-conforming use changing to another non-conforming use. That is a permitted use as long as they meet the 8.3 criteria.

Stan Given agreed with Dennis Keeler that they need to get past 6.6 first; he wasn't sure they had enough information to do that tonight. This triggers issues under 8.3 and 8.7 with the traffic and disruption of the neighborhood. He thought moving the entrance to Pine Rd. would alleviate some of the traffic concerns. He would support tabling it.

Rudy Israel agreed with Dennis Keeler. Due to the issues of access and egress with the parking lot and the intensity of the use he felt the Planning Board should review it first.

Don Russell disagreed; he felt 6.4 was the proper section that applies here. He felt the traffic concern could be resolved. He felt this was a good use for this shop; it wasn't a good place to build a house. He felt it would get fair treatment at the Planning Board.

Jay Meyer said it was a difficult and problematic situation. He agreed with Willie Audet and Dennis Keeler. He can't approve it with the problem with 6.6; he felt it was clear that the use has been abandoned. He read 6.6. He felt the use has been lost. This is a residential neighborhood; restaurants are not allowed in a RA zone. The only way to get this was to argue that this is an improvement over the prior use as a ceramic shop under the criteria of 8.3 and 8.7. He didn't feel it was an improvement. The site will generate more traffic, exacerbating the existing traffic problem. The only way it could be an improvement would be to match the traffic of the ceramics shop at most. Even if he could get past 6.6, he can't get past 6.4.

Jon Berry asked about 6.6; he pointed out that this has always been a non-conforming lot and use. If the former owner wanted to come back and restart her ceramic shop, she would have to come back to the Board for a conditional use application. He referenced 6.3: "*Once converted to a conforming structure,*

use, or lot, no structure, use, or lot shall revert to a nonconforming status.” He thought the inference by the other members was that once it was abandoned it converted to a conforming structure and the applicants are now trying to convert it to non-conforming. He didn’t see 6.6 as a bar to a non-conforming use on the lot.

Dennis Keeler argued that there has been no use so the non-conforming use of the building is discontinued.

The Board discussed 6.6: *“If a nonconforming use or the use of a nonconforming structure or lot is discontinued for twelve (12) consecutive months, such use shall no longer be permitted”* and whether that meant that a non-conforming use could still be allowed with a conditional use permit, or whether the allowance for any non-conforming use at that property was now gone. Dennis Keeler referenced a former gas station on Winn Rd. that had been abandoned for a number of years. They wanted to place a new commercial use in the building and went to court. The court determined that the use had been discontinued and was not allowed. That discontinuance caused the property to lose its non-conforming status; there is a house there now. Jon Berry would like to hear from the property owner as to when the use of the building actually stopped. He felt the proposal was an improvement over what is there now.

Dennis Keeler suggested the Board make a determination on the discontinuation of the use. If they determine that it is not discontinued, then they can entertain a motion.

Dennis Keeler moved to deny the application under 8.3 and 6.4 because the non-conforming use has been discontinued under section 6.6 for longer than 12 months. Willie Audet seconded.

Stan Given was troubled that they have no documentation as to when the discontinuation of the use took place.

Willie Audet said it was on the tax record that the ceramics shop is closed.

Stan Given pointed out that it didn’t say when it closed. He wondered if the use is discontinued if the equipment is still there, and the owner is still paying taxes on the equipment. He was troubled with businesses going into residential neighborhoods. Home occupations can’t have signs, and now they have farm stands going in, and this business going in. He thought there was information that could answer the question definitively as to whether the use is discontinued.

Don Russell still thought 6.4 applied. Jay Meyer said 6.4 states that it needs to be an improvement of those conditions.

Dennis Keeler was willing to table to allow them to bring evidence forward on the discontinuation.

Jon Berry felt it was compelling if the Town continued to tax the property as a nonconforming commercial property.

Jay Meyer thought they needed to show a definitive intent to preserve the nonconforming use. He thought it would be difficult to prove that this is a less intensive use than the ceramic shop.

Dennis Keeler withdrew his motion.

Dennis Keeler wondered if they needed some guidance from the Town Attorney on discontinuance.

Justin Brown said he could research it and would check with the Town Attorney.

Dennis Keeler moved to table the item pending further feedback from the Town Attorney and to allow the applicant to submit materials addressing 8.3 and 6.7. Willie Audet seconded. Motion carried 5-0.

- e) 4 Avon Rd. Lisa Agnew**-Conditional Use under Section 6.2a for a deck. Parcel U01-059, zoned RA.

Ms. Agnew would like to build a deck off the kitchen door that is 16x12 feet.

Public comment period opened; no public comment.

Stan Given moved to approve the application; Dennis Keeler seconded. Motion carried 5-0.

a) 342 US RT 1 Saint Falmouth LLC- Requesting Conditional Use under Section 8.3 for a wholesale distribution and storage warehouse. Parcel U53-002, zoned BP.

Anthony Donovan, representing the applicant, explained there is a residence in the building. The owner is currently using the building as storage; he buys auction lots. It isn't an intense use, and there are no neighbors nearby.

Public comment period opened; no public comment.

Rudy Israel asked for a plan of the building showing the dimensions. Mr. Donovan provided a copy of the floor plan to the Board for the record. It is a 7000 sq. foot building with a garage out back.

Stan Given thought it used to be a residence. Mr. Donovan said that was correct. The storage use will be an eclectic mix of things, clothing, bicycles, flashlights, furniture, etc.

Stan Given said there will be no retail sale. Mr. Donovan said no, there would be no retail and there are no plans for expansions or modifications to the building.

Stan Given asked about storage of anything of a hazardous nature. Mr. Donovan said the building was rated by state for commercial fire by the State Fire Marshall.

Dennis Keeler did think there was a lot of guidance as to what the warehouse use means. He asked if the apartment use would continue. Mr. Donovan said yes; it was vacated recently but will be filled.

Dennis Keeler asked how things get in and out. Mr. Donovan didn't know how big the trucks would be but would guess that no bigger than a box truck.

Dennis Keeler asked if this is a change of use.

Justin Brown said there have been a number of uses here. It was set up to be office space; that was the intent and is a permitted use in the district. They are going from a permitted use (office space) to a conditional use.

Jon Berry asked about the wholesale distribution piece. Mr. Donovan felt that was part of the ordinance definition. Their intended use would be more warehouse/storage.

Jon Berry felt that there are a number of trucking companies that might be interested in a distribution center this close to the highway.

Mr. Donovan said there are not going to be any trucking companies interested in this property. This will be a warehouse. Even doing ebay stuff won't create a lot of distribution use that would impact the area in any way.

Dennis Keeler asked if they need anything more than warehouse. He asked if the applicant needed an approval allowing distribution. Mr. Donovan didn't want to limit the property any further. He didn't see the harm in a distribution center.

Jay Meyer thought it was pretty self-limiting. The existing structure is not conducive to distribution and there are no loading berths. Even if it was an intensive wholesale distributor this location isn't near anything.

Jon Berry pointed out that once they approve the wholesale distribution there is no way to say what goes in there; it could be fireworks, for example.

Stan Given pointed out that there is an apartment there; he was concerned about storage of potentially hazardous material adjacent to a residence. He asked who regulates that.

Justin Brown said that falls to the CEO. When he met with Mr. Donovan he was thinking non-hazardous material, like clothing. He felt the Board could put a limit on the materials stored to not allow hazardous or flammable materials.

Stan Given said there is supposed to be a certain separation between storage and a residence.

Justin Brown said the building is currently set up for office separation; there are degree levels based on what is stored and that is how it is rated.

Stan Given said to allow the storage and the residence Justin Brown would need to know what the owner is storing. Justin Brown agreed.

Stan Given said the Code limits the amount of flammable liquid one can have stored at a home.

Dennis Keeler wondered if a condition limiting hazardous or flammable materials would be enough.

Justin Brown said he would get involved anyway, if he was aware of the storage of hazardous materials. He said putting a condition on it looks good on paper and puts any future owners on notice.

Jon Berry asked if CEO review would be triggered if they received notice that hazardous or flammable materials were being moved in there. Justin Brown said yes, they would go in and do an inspection.

Jon Berry wondered if a more suitable condition would be that the owner must notice the Town of the lessee's intent regarding the use. He didn't want to put limits on it. Justin Brown said that would work.

Jon Berry suggested a condition that, before they can lease or sell the property, the owner has to provide the CEO with notice of the intended use, including whatever is going to be stored and distributed out of that building.

Stan Given was concerned with the safety of the residence; if you have lots of stuff stored there, no matter what it is, it would be dangerous if it caught on fire. Justin Brown said he will inspect for separation but since the building was initially a residence, and then office space, he didn't think it was built with proper separations in place.

Dennis Keeler observed that the presence of the apartment makes this more difficult, due to the separation issue. He was concerned that the current owner can't notice them what he is going to store there, as it changes based on what he gets at auction.

The Board debated a condition on the approval that would require notice from the owner as to the materials being stored and how such a condition could be drafted. Mr. Donovan argued that the Town's life and safety code already protects people. The Board's concerns focused on the safety of the materials being stored and how the Town would be made aware of what was stored there. They were also concerned about how the Town would be made aware of a new lessee's use of the building if they approved the distribution use.

Stan Given wondered about periodic inspections to examine what is being stored there. Justin Brown doesn't typically do annual inspections of commercial properties, but this is a unique case. He could do it if the Board requests it.

Jay Meyer moved to approve the application with the conditions that the CEO will inspect it to make sure that necessary fire codes are satisfied for the residence and that it is approved for warehousing of miscellaneous goods that are not hazardous or highly flammable. If there is intent to warehouse highly flammable or hazardous materials, the CEO must be notified. Willie Audet seconded.

Dennis Keeler clarified that the inspection for the residence is to determine that the separation between the residence and the storage is satisfied.

Stan Given suggested adding the term “combustible”. The Board felt the condition was sufficient as is. Motion carried 5-0.

5. Other business

Jay Meyer discussed the water view issue currently before the Council. An amendment was introduced at the Council meeting last night and there will be a public hearing on March 26. The Council is taking a three-phase approach to the amendments.

Adjourn

Meeting adjourned at 10:40 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary