



Town of Falmouth Community Development Department
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**Board of Zoning Appeals
Tuesday September 25, 2012 6:30PM Minutes
Falmouth Town Hall**

MEMBERS PRESENT – Dennis Keeler (Acting Chair), Stan Given, Don Russell (Associate) and Willie Audet

MEMBERS ABSENT – Jonathan Berry, Rudy Israel (Associate) and Jay Meyer (Chair)

STAFF PRESENT – Justin Brown, Code Enforcement Officer

1. **Call to order:** The meeting was called to order at 6:42 pm by Vice Chairman Dennis Keeler.
2. **Discussion and adoption of the minutes of the previous hearing(s).**

The board elected to continue the review of minutes to the October meeting.

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

Mr. Russell noted that on both items d & e the conditions of approval questions weren't attached. It was determined that the applications were substantially complete and ready for review.

4. **Applications**

- a) **20 Carmichael Ave. Ed & Edna Sayers-** Are requesting Conditional Use under Section 5.22.1 for an addition and Accessory Dwelling Unit. Parcel U18-002-J, zoned RA. Continued from the August meeting.

Fred Penicho was present on behalf of the Sayers and gave an overview of the proposal. Several items have been addressed as a result of the last meeting:

- The side yard setback now meets the minimum requirement.
- The proposal for a second driveway access has been eliminated.
- The walkway location has been adjusted to minimize disturbance on the front lawn.
- Elevations have been modified to address abutter concerns regarding character of neighborhood.
- The drip edge of the building has addressed water runoff and drainage concerns raised by neighbors.

Public Input:

Bill McKenney of 16 Carmichael Avenue was present and spoke. He also submitted an email in favor of the project with the outlined changes incorporated from the last meeting. He

voiced his support on behalf of himself and his wife and wished the applicants well with the project.

Roy Peppiatt of 18 Carmichael Avenue was present and spoke in favor of the project.

Board comments and questions included

- Location of structure in relation to side yard setback requirement.
- Location of existing monuments and pins.
- New square footage calculations for the addition.

The Board expressed appreciation toward the neighbors and applicant for working out issues together and coming back to the board in agreement.

Motion: Mr. Russell made a motion for approval of the application as presented in the official record. Mr. Given seconded the motion.

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

- b) **5 Reg Roc Rd. Monique Violette**-Is requesting approval for a conditional use under Section 8.2 to add a new entry way. Parcel U01-151, zoned RA.

Monique Violette was present and spoke to the application. She gave an overview of proposal.

Joe Kinney the contractor was also present. He stated that the existing house is nonconforming due to setback requirements. The applicant wants to move the structure 4' closer to the road.

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

Board comments and questions included

- Observation that conditional use criteria are not included in the packet. Mr. Brown read the criteria from the zoning ordinance.
- Location of monumentation, structure and required setbacks.

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

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

- c) **27 Twin Meadows Ln. Shannon Auritt.** Request for a Hearing regarding a decision by the Code Enforcement Officer. Parcel R03-026-004, zoned FF.

Mr. Keeler gave an overview of the process for hearing an appeal of the Code Enforcement Officer.

Christopher Granson Attorney of Murray, Plummer, and Murray was present on behalf of the Auritt's interest. Mr. Granson gave an overview of the history of the subdivision and the parcel specifically being addressed. Handouts were submitted to the board members for consideration during his presentation.

Mr. Granson reviewed the materials in regard to the clearing of vegetation desired by the applicant. The applicant believes that the required 50' buffer to high value wetlands should not apply to this property as it was not shown on the subdivision plan approved in October 2005.

Mr. Brown was present and spoke. He reviewed section 5.38 of the zoning ordinance regarding buffers to high value wetlands which exists in the regulations outside the subdivision approval. He stated that the wetland buffer is a MDEP mandated regulation.

Public Input:

David Hershon Esq. representing Twin Meadows homeowner association was present. He doesn't feel the town made a mistake in its original subdivision approval. The plan clearly delineates the location of the high value wetland. It is the applicant's intention to cut within 50' of the wetland. This is not permitted under the ordinance or on the subdivision plan.

Mrs. Auritt was present and explained to the board that she wants to clean up dead and decaying trees in her yard because she has 2 disabled small children who could be injured by falling trees.

Board comments and questions included:

- Location of the trees in question.
- Whether the wetlands are designated as high value.
- The interpretation of the Planning Board's decision regarding wetland buffer requirements. Did the Planning Board grant a waiver of the buffer requirement?
- The plan shows areas where trees can be cut. The area in question is not labeled. The applicant's attorney interprets by negative implication that no buffer restrictions apply because it is not labeled as such on the plan.
- The current ordinance does not allow cutting within 50' of a high value wetland. It is not allowed today nor was it in 2005 when the subdivision was approved.
- Appeal period of the subdivision and how it relates to the lot and proposed activity.
- Photos submitted and the vantage point from which they were taken.
- Evidence in the photos of recently cut vegetation/trees. They are not in the buffer according to applicant and Mr. Brown. The applicant's attorney represented that no cutting has occurred in the buffer.

Shannon Auritt stated that the MDEP designated the area in question as low value habitat and that she has a letter from Stantec Consultants to that extent.

Continued board discussion included:

- Notes on the subdivision plan regarding setbacks.
- Use of “typical” regarding setbacks on the plan.
- Note 18 referencing the zoning ordinance.
- Ability to take down diseased and dying vegetation. Replanting plan is required.

The association attorney spoke to the process for changing the subdivision plan within the association. This is outside the process required by the town.

Mr. Russell feels that the trees are going to come down in their own time according to the photo representation.

Mrs. Aurett reviewed the history of the subdivision and her interaction and interpretation of the buffer with Mr. Brown. She thought the wetland was low value and that she could landscape outside of the wetlands and that a buffer didn't apply. The town issued a building permit for the house within the buffer in question.

Mr. Brown indicated that the town did issue a building permit in the 75' buffer but not the 50' and that no pursuance of a violation has been issued at this time. It should have been caught before.

Discussion ensued regarding:

- The possibility of an error by the creator of the plan versus the purposeful omission which could indicate the regulation does not apply.
- Whether the appellant should go back to the association for permission to go back to the planning board for amendment/approval to remove vegetation in the buffer.

Mr. Keeler stated that the board can't over rule a requirement by negative implication and that to do so would be setting a dangerous precedent. The applicant raises legitimate concerns. There is a process in place to address an identified danger caused by diseased and dying trees in a mandated buffer. The building permit is an affirmative decision that could have been appealed within 30 days and is not relevant to the inquiry at hand.

Motion: Mr. Audet made a motion to deny the request of Shannon Aurritt to overrule the decision of the code enforcement officer as presented in the official record. Mr. Given seconded the motion.

Vote: 3 - Yea. Mr. Russell no. (Mr. Russell voting as alternate)

d) **45 Waites Landing Rd. Kathleen Porensky-** Is requesting Conditional Use under Section 6.2 for an addition of a sunroom and replace porch. Parcel U05-021-C, zoned RC.

Kathleen and Porensky and her husband were present and gave an overview of the proposal. The property does not meet the minimum road frontage requirement but all other zoning requirements are met. Application materials include a response to each of the conditional use criteria along with photos.

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

Board comments and questions included:

- Private right of way and easement area which is a dirt road of which four properties share the maintenance responsibilities. Two properties use it for access. ROW width in relation to property lines.
- Drawing is not to scale. Side yard setback requirement is 20’.
- The property is in the Waterview Overlay District and the only reason it is before the board is due to location in this overlay district. This is the 3rd trip to the board this year for projects on this property.

Motion: Mr. Given made a motion for approval of the application as presented in the official record. Mr. Russell seconded the motion.

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

- e) **6 Waites Landing Rd. Sam & Theresa Pierce-** Are requesting Conditional Use under Section 6.2 for additions. Parcel U08-006-B, zoned RC.

Theresa Pierce was present with her husband and reviewed the proposed project.

Dick Baker from North Yarmouth was present. He is the contractor for the applicant. Mr. Baker reviewed the history and integrity of the structures in question. Building elevations were presented to the board.

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

Board comments and questions included

- Pool addition is coming off the back of the garage.
- Complete conventional set of plans have been submitted to the Code Enforcement Officer.

Motion: Mr. Russell made a motion for approval of the application as presented in the official record. Mr. Given seconded the motion.

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

- f) **17 Kelley Rd. Douglas B. Foust-**Is requesting Conditional Use under Section 6.2 for an addition and a Variance to a side set back. Parcel U01-217, zoned RA.

Paul Willis was present representing the applicant and gave an overview of proposal. The proposal was originally approved in May but was not recorded at the registry within 90 days. The failure to do so was an oversight. The facts surrounding the application have not changed since the granting of the variance in May.

Mr. Keeler noted that he recused himself during the original application. Mr. Audet noted that he was not present at the original meeting in May.

Mr. Willis gave more detail of the proposal and materials submitted in the packet of application information.

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

Board comments and questions included

- Difference between mislocated dwelling vs. after the fact permit vs. letter of no action.
- Unusual circumstances surrounding this particular situation.
- Right of way notes on the plan. Status of that piece of property. Current ownership.
- Review of several other notes on property regarding side yard setbacks.
- Monumentation.

Motion: Mr. Audet made a motion for approval of a conditional use request of the application as presented in the official record. Mr. Russell seconded the motion.

Mr. Keeler made clear that this is a very unusual situation. It shouldn't be a problem as far as setting a precedent due to this fact.

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

Motion: Mr. Given made a motion for re-approval of the variance request of the application as presented in the official record. The finding of the May 22, 2012 meeting was referenced. The Board is re-adopting those findings of fact. Mr. Audet seconded the motion.

Vote: Yea – Unanimous. (Mr. Russell voting as alternate)

5. Other Business

Staff noted that templates for BZA notices of decision and the ordinance language will be modified to include reference to the requirement to record variance within 90 days.

6. Adjournment

The meeting adjourned at 9:00 PM.

Respectfully submitted,

Dawn Emerson
Recording Secretary

**Please note that this is not a verbatim accounting of the meeting. An inclusive digital video file of the meeting can be accessed on the Town of Falmouth website.*