



Town of Falmouth Community Development Department
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**Board of Zoning Appeals
Tuesday March 26, 2013 6:30PM Minutes
Falmouth Town Hall**

MEMBERS PRESENT – Jonathan Berry, Jay Meyer, Stan Given, Willie Audet and Roland Beaudoin (Associate) Dennis Keeler arrived at 7PM.

MEMBERS ABSENT – All members present.

STAFF PRESENT – Justin Brown, Code Enforcement Officer

1. **Call to order:** The meeting was called to order at 6:31 pm by Chairman Audet.
2. **Minutes:** No minutes were available to review at this meeting. Minutes of February and March will need to be reviewed at the April meeting.
3. **Discussion and finding that all applications presented for this hearing are complete.**

It was determined by the board that the remaining agenda applications were substantially complete and ready to begin the review process. It was noted that the board should renew the discussion about when information on a particular application can be submitted prior to a meeting.

4. Applications

- a) **410 Middle Rd. Aaron Amirault-** Requesting Conditional Use under Section 5.21 for a Home Occupation. Parcel R01-037, zoned RBm.

Mr. Berry recused himself.

Mr. Amirault was present and gave an overview of the proposal as updated since the last meeting in January. He has tried to work with the neighbor to no avail. He has submitted additional information to make the application complete.

Board comments and questions included:

- Use and size of 3 accessory structures. Review of role and hours of operation on the property. Load in the morning and unload at the end of the day and go home. Commercial activity vs. those that would have been conducted with a residential use. He needs to have 2 structures to fit his equipment. He would have to build one larger structure within the maximum square footage allowance if he was restricted to using one for the home occupation. 3 used for the business. There are

2 others on the property that were there when purchased and not used for the business.

- Aaron does change oil on equipment himself with the assistance to one employee.
- Employees required to arrive at 7:45 so that the work day can start at 8AM. Arrive back at property at 4-5 to unload and finish day. May be later in August when weather is activity. It is not a problem to restrict employees from the site during the work day although having them to help with projects at the house would be nice.
- Location of property pins and area of ownership in relation to the neighbors.
- Type of business as landscaping vs. snow removal. Original application was for landscaping due to the time of year it was submitted but does include snow removal services and is part of what is being requested.
- Location of the stockade fence and agreeability of applicant to locate additional stockade fence.
- Additional persons have been used in the winter operations in the past. They do come to the property and park in the lot. These are rare occurrences. Total of 3 employees plus business owner are the regular employees. Could have additional employees park at a park and ride and he could pick up and drop off there.
- Location of pressure washing (in driveway up by the house). If he can't do this on site it is difficult to maintain the equipment. For example mowers get grass on them. It is not to make them look good but to function well.
- Fence was in place when the property was purchased.

Lori Doherty of 12 Middle Road spoke in opposition. She spoke at previous meeting and submitted written materials. Feels that any fence won't be able to block the view, smells etc. The summer workers wake her up at 7:30am and wake her up. Applicant uses a sand truck all winter and goes in and out all winter. Due to driveway location outside the window she can't sleep as her bedroom is right on it. Power washing gives off fumes into her window. Additional concerns about other noises which she expounded on.

Board input for voting:

Mr. Beaudoin feels as currently operating doesn't meet ordinance. May able to be approved with conditions of activity.

Mr. Given feels the same. Number of employees, noise, disruption of residential character and a few others would need to be addressed. The business may be too big for a home occupation. There would need to be a significant reduction in activity for him to feel it can be approved. The business seems to exceed the requirements by more than a small margin.

Mr. Meyer also agreed with Mr. Beaudoin. Areas of problems. Not entirely within a structure, has more than 2 employees, exterior storage of materials and equipment, noise or activity at unreasonable hours, fumes. Only one accessory structure supposed to be used. Would require one larger structure to be built. Could table or withdraw and come

back with one large structure on a plan. Would need very restrictive conditions to meet the criteria. Doesn't appear to meet the standards.

The applicant requested a site visit by the board members as he feels their impression is of a much larger business than he actually has. They get a more accurate depiction of what he is doing with a visit.

Mr. Audet indicated that regardless of some of the items there is the issue of the number of structures. He may need to go out and get some commercial space. This use can be less customary than a typical home occupation and can be disruptive to the community as such.

The applicant requested to withdraw his application so that he can come back to the board with a proposal to build one larger building to contain the equipment et al and may allow the board to address the criteria concerns. Additionally he requested a site walk.

The chair indicated that the concerns raised are based on activity and not the physical layout of the property and a site walk is not necessary given the items they are considering.

Mr. Beaudoin clarified to the applicant that the town may take formal enforcement action to require the applicant to cease his business at this location in the interim even if an application is forthcoming.

The applicant acknowledged this fact. This time of year is a lull between plowing and landscaping and there isn't a lot of activity at present.

The item was withdrawn. Any further action by the town will be up to the CEO.

- b) **57 Hurricane Rd. Robert Libby representing David & Emily Ghiorse-Tabled from January.** Requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling. Parcel R06-083-J, zoned FFm.

Tabled at the applicant's request.

- c) **77 Waites Landing Rd. Geoffrey LaFond-** Requesting Conditional Use under Section 6.2 to construct a garage. Parcel U05-019, zoned RC.

Tabled at the applicant's request.

- d) **240 Gray Rd. Aroldo C. Ribeiro -** Requesting a Variance for a side setback for a garage. Parcel R06-032-A, zoned VMU.

Mr. Audet watched the tape from previous presentation and will be voting. Mr. Beaudoin did not watch and will not be voting.

Jim Barnes attorney for the applicant was present and gave an overview of the proposal. He addressed the criteria for the granting of a variance and the history of the property and activity in detail.

Aroldo Ribeiro (Harold) was present. He explained what survey he used and how decisions were made with the information available.

Jonathan Winslow (abutter who raised the concern) was present and spoke against the application. He disputed the applicant's representation of historical surveys and deeds which resulted in the setback error. He is a contractor and feels that survey sealed stamped plans should be required and relied upon so that errors like this do not occur in the future. The board members had several questions for Jonathan.

Board comments and questions included:

- What was the mistake that caused the issue? The use of the northerly boundary line. Surveying and interpretation errors, what was relied on as the property line was incorrect and inconsistent.
- History of the decisions, hearings, applications and permits
- A much looser reading of the hardship definition is being advocated for than this board has ever applied. He is struggling with item 4. Inaccurate references in deeds and surveys are not a unique problem.
- Mr. Meyer feels that this cannot be granted. Still doesn't understand how the mistake was made. There are a number of accurate surveys available. Can't meet a reasonable return doesn't mean refinancing. Garage could be on the other side and doesn't need a garage to meet reasonable return.
- Mr. Given agrees with Mr. Meyer. He feels that it wasn't measured out correctly. Reasonable return doesn't mean no return at all or maximum return. Can't vote to approve.
- Mr. Keeler is on board with the others. He might be able to find way through 4 which is not result of action taken by the applicant due to the number of surveys but can't get past 1 which is reasonable return. If this were an attached garage would it fall under mislocated building? Mr. Brown stated that it would become part of the house and it could apply. He felt that there might be another route for the applicant. A variance is tough to get.

Motion: Mr. Meyer made a motion to deny the application Seconded by Mr. Given.

Vote: Yea – Unanimous.

Finding of Facts:

1. Reasonable return: 5-0 not satisfied
2. Unique circumstance: 4-1 not satisfied (Mr. Meyer)
3. Character of locality: not satisfied 5-0
4. Not result of action by prior owner 4-1 not satisfied (Mr. Keeler)

The application for a variance was denied.

- e) **2 Town Landing Rd. Dwight Herdrich-** Requesting Conditional Use under Section 6.2 for an enlargement. Parcel U17-055, zoned RA.

Mr. Herdrich was present and gave an overview of the proposal since the last meeting. He modified the plan and would like to enlarge.

Mr. Brown confirmed the applicant's representation of the abutter's support of the project. He had previously objected but his concerns have been remedied. Andy Highland). Mr. Brown read an email into the record as such.

No one was present from the public to speak to this application.

Board comments and questions included:

- Clarification of which plans are being approved (ones submitted with plan 1/22/13). Elevations changed not plan view. Andy Highland's email comment referenced March plans which do appear to be in the file. Confusion although applicant did submit multiple copies of the correct plans but did not make it into packets apparently. There is no controversy around plan but correct reference needs to be made. Plans which are marked up are correct. Approval is the plan without the mark ups.

Motion: Mr. Meyer made a motion to approve the application provided that the enlargement or extension is consistent with drawings L1, A2, A6 and A7 all dated March 8, 2013 without any handwritten notes. Seconded by Mr. Given.

Vote: Yea – Unanimous.

- f) **170 US RT ONE. Frank C. Heinemann –Requesting Conditional Use under Section 8.3 to relocate a sign. Parcel U51-001-D, zoned SB.**

Tom Greer from Pinkham and Greer represented Mr. Heinemann's proposal. He reviewed the proposal. The freestanding sign is non-conforming and requires both ZBA and Planning Board review and approval.

Board comments and questions included:

- Size of sign and lettering.
- Reason for review of the board. Nonconforming sign needs conditional use to be relocated. They are pulling out of the right of way. This is not a variance request.
- MDOT involvement if any.
- Orientation of the sign and height of sign.

No one was present from the public to speak to this application.

Vote: Yea – Unanimous.

- g) **30 Kelley Rd. The Boathouse Rox, LLC.-**Requesting Conditional Use under Section 6.11 for a deck expansion. Parcel U01-215-D, zoned RA.

Roxanne Cole was present and gave an overview of the proposal. The applicant came to the board earlier in 2012 for an expansion within the SOD which was granted. This is a modification request of that approval. During the construction process she has become aware of some additional changes she would like to make.

No one was present from the public to speak to this application.

Board comments and questions included:

- Clarification of what was previously approved and what is being requested.

Motion: Mr. Given made a motion to approve the application. The motion was seconded by Mr. Meyer.

Vote: Yea – Unanimous.

5. Other Business

Mr. Brown handed out a memo outlining a proposed zoning amendment to section 6 for review by the board. He just wants them to be aware of the language under review. The board can comment via email or call Justin.

Mr. Given noted that the application completeness checklist and sample plot plan sketch were circulated in September but no action has been taken on them yet. He asked that the board take this up at the next meeting for action.

6. Adjournment

The meeting adjourned at 9:12PM.

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.*