

Falmouth Zoning Board of Appeals  
Minutes of January 11, 2018 @ 6:30

Present: Kenneth Foreman, (Chairman), Terrence Hurrie (Vice Chair), Edward Van Keuren (Acting Clerk), Member Paul Murphy and Alternates Robert Dugan and Gerald Potamis  
Sari Budrow -Zoning Administrator  
Absent: Kim Bielan

**Hearings:**

*#097-17 Ellis, 39 Rebecca Ann Lane, East Falmouth  
Special Permit for a Home Occupation*

Voting Members: T. Hurrie, K. Foreman, E. Van Keuren, P. Murphy, R. Dugan

E. Van Keuren read the public notice and the following referrals into the record

2 letters of support

Engineering-No further comment

Fire- Concerns application depending on the cooking appliances the applicants might have to meet certain requirements under the NFPA. Please contact the fire department if any questions.

Mary and Gary Ellis of 39 Rebecca Ann Lane presented the following:

M. Ellis- We approached the town 3 years ago to have a home business and the board of health issued us a license. It wasn't until a neighbor dispute that we came to find out we were not correctly zoned. I was doing this for over 30 years on the vineyard. We needed to downsize. I then started working from home and found that I was able to spend time with my young son and work from home and that is what I would like to continue doing.

K. Foreman- The Board of Health granted approval?

M. Ellis- Yes. I had called him and asked him if I could do this legal, since I was making this life decision and it took about two calls and the house was inspected. Then we sold our house on the vineyard we did a renovation of the kitchen so I could move forward with this and it was completed in March of this year and we added more ovens from Crane Appliance.

K. Foreman- So you did talk to the fire department?

G. Ellis-It is all residential equipment. Not Commercial anything

M. Ellis- I had also spoke to the gas inspector as well.

K. Foreman-Can you speak to the volume?

M. Ellis-I have a lot of clientele from the Vineyard. Summer orders from the Vineyard. I have a lot of weekly orders as well from the Vineyard. I transport by commuter boat to the vineyard. I meet people places if needed for delivery.

G. Ellis- We got 18 deliveries in 2017 for stock.

M. Ellis- I would say the highest volume was 100 over the 4th of July. Thanksgiving was 35 or 40.

R. Dugan-On your deliveries, what type of truck comes in?

M. Ellis- 18 times a year and it is a 6 wheeler box truck.

R. Dugan- Is it for pickup or delivery?

G. Ellis- It is to bring us stock.

R. Dugan- Is there space to park?

G. Ellis-They back in the driveway

R. Dugan- Do you know what the percentage of the home is being used for work?

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G. Ellis- We submitted the paperwork, I don't really know but off the top of my head I think it is less than 10%.

R. Dugan - Is there any signage?

M. Ellis- One sign that is 2x2.

R. Dugan- Any trash containers?

M. Ellis- No.

P. Murphy—did you seek the guidance of the building commissioner

M. Ellis-No

No this is after the fact

E. Van Keuren- Do you believe you followed all the laws and that it is not a wholesale operation?

M. Ellis- Yes and this is not a wholesale operation. They knew this three years ago.

T. Hurrie- So you bake the pies in the Kitchen but how do your customers gets their pies? Does anyone come to your house to pick up?

G. Ellis- They have before but 90% are delivery in our personal vehicles. 90% of the work is offsite.

T. Harris- Who is the owner?

M. Ellis- Just me

G. Potamis- What about the signage?

G.Ellis- We has submitted pictures of what it looks like.

G. Potamis- Do requests come in through the Internet?

M.Ellis-Yes

G. Potamis- I don't know if that is considered commercial?

Mary- Cottage laws are in effect. I don't believe we have the volume to be considered commercial. It is person to person sale.

G.Potamis- What is the average sale

M. Ellis- 3 or 4 pies

K. Foreman-18 delivery's from the truck. What's in a delivery?

M. Ellis-10 pieces. Includes fruit, brown sugar, flower, sugar, butter

K. Foreman- And this can all fit in your residential storage?

M. Ellis- Yes. I have one freezer and one fridge for business (one of each for personal)

K. Foreman-Can you ship to California?

M. Ellis- No only Mass.

K. Foreman- Estimate on how many pies you bake a year.

M. Ellis- I would say 1500 maybe I don't know.

K. Foreman- How many pies can you get out of truck load?

M. Ellis- Probably 80-100

K. Foreman- So if you have 18 truckloads that would put you somewhere between 1500 and 2000.

M. Ellis- Yes

R. Dugan- What other areas do you deliver to?

M. Ellis- Randolph and Stoughton and the Vineyard.

R. Dugan-How do they get there?

M. Ellis- We deliver them.

K. Foreman-Do you have any customer parking?

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M. Ellis- No but we have room for seven cars in driveway

G. Potamis- Is there a vehicle size limitation on home based businesses?

S- Budrow- They are applying for the home occupation piece.

K. Foreman- The cars you use are personal?

M. Ellis- Yes.

J. Barnum- I'm Jeff Barnum and I live next to the Ellis's at 36 Rebecca Anne lane. We have been neighbors for the last 16 years. In August I came home and my mailbox was broken. They told me there son ran into it. When in fact it was probably a box truck. No apology was given no means of saying we will take care of it. If people had a business on the vineyard I have a hard time believing that they don't know the laws. I believe they are violating laws. These vehicles are huge and it is a small cul de sac. They are using other driveways. My neighbor had to put a cone in his driveway. You shouldn't have to put a cone there so that the trucks can't turn around.

K. Foreman- So is the issue the delivery trucks or the clients pickup?

J. Barnum- Yes. But also the violation of the rules and laws. For three years they have not been following the rules.

K. Foreman-In the operation of the business what can the board do and consider in terms of any conditions that would make it less intrusive to the neighborhood?

J. Barnum- I want to see the trucks stop. I want to make sure they are following the rules.

They are trying to take over my property and I want that to stop. They had two signs and one came down. My neighbor has the same concerns.

P.Murphy-How many homes are there?

S. Budrow- Map is in the file.

K. Foreman- I think the question for us is, Is there any kind of condition that would be relevant to make guidelines to the deliveries.

R. Dugan- They are applying under the home occupation. It says that it should not be any additional traffic then it normally would be. Just the addition of the 18 trips of the ten box trucks we are not following the home occupation. But this is specific to the business. I think that might be a problem

K. Foreman-So if we think about other home occupation permits we have granted. Home base businesses are tailored. Let's think about that some modest increase has been allowed.

R. Dugan- So even if you look at the home base which mentions a 13,000 lb. truck. How much does a box truck weigh?

S. Budrow- Substantial

K. Foreman-Is there any way you can get your supplies off site? It seems that they don't need such a large truck. Or they could go off site to get the supplies.

P. Murphy-What bothers me is that a lot of times home base offices are granted. I can feel this out and listen to the concerns but I think that complaints about home based businesses bother me because there shouldn't be any.

K. Foreman- Right, the idea is that if you're going to run your business you're not going to disrupt the neighborhood.

R. Dugan-We are going to need more information from the Health Agent because in his response regarding the permit he has already given he wasn't sure if that covered deliveries vs. a person driving to the house for pick up for purchase. Seems like he was going to check in with the state to see what was covered.

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S. Budrow- He did send it and it does limit a certain amount but my conversation with David Carignan and what he wasn't sure of was that they take it to the patriot, hand deliver and have someone else pick up on the other side on the Island. I think one of the concerns is with how they get it to Stoughton and Randolph in which the applicants stated the deliver it personally. Stated it is not wholesale. I think that covers what the state was saying.

E. Van Keuren- Answer to the question of Are there any personal marketing restrictions for the kitchens? Yes, First only household members are allowed to be employed. Second the use of brokers and wholesalers is prohibited. So it appears they are not violating that.

K.Foreman- What about the possibility about changing the way of the delivery?

M Ellis- We talked to them and they won't meet me in the parking lot for insurance liability. But mainly because they come into our road and they turn around without using anyone else driveway besides mine. We live next to people who take buses every single day and those busses come down our road.

S. Budrow- The concern is the big truck. That is what the board cares about.

K.Foreman- This is additional traffic due to a business you are running which requires the additional traffic. Is there any way they can change the type of truck?

M. Ellis- No and I've been with them and I get a discount.

G. Ellis- They don't just deliver to us.

P.Murphy- Can you buy your products and bring them home because the objection is the traffic.

M. Ellis - If I go to Hyannis to get food in bulk it's going to melt and the cost will be much more.

K. Foreman- Ok from the board standpoint let's think about some of the landscape companies we have approved for permit. Is this more or less impactful? They make daily trips to and from.

S. Budrow- But those trucks stay on their property.

M. Ellis- This truck comes in and is there for 15 minutes at 12pm.

G.Potamis- Can we narrow down time of delivers?

M. Ellis- We did that so they can come between 9-12. It is strictly on there not to use anyone's property or driveways.

G.Potamis -What days do they deliver?

M. Ellis-Tuesday and Friday. It's mostly in the summer for business. It is dead until Easter.

K. Forman-What kind of pies do you cook?

M. Ellis- Fruit, special cookie pies, cookies, cakes. A wide variety.

J. Barnum-I'm confused between the definition between occupation and business?

S.Budrow- There are home occupations for other bakeries that we have approved and the board of health may need to be checked with on this one.

J. Barnum-Is there a definition?

S. Budrow- If the board approves they will condition this.

K. Foreman-You can read the bylaw for a definition but it doesn't stipulate the size of the business.

J. Barnum- Trying to understand where is the crossover.

S. Budrow- Home occupation was made so people can operate out of their home.

K. Foreman- What does the board want to do. We can close, we can continue. Do you think we need to get more information from the board of health?

S. Budrow-I think the concern is the truck. If you want more information from the Board of health the only information I think you could get from them is if he is comfortable with what they are doing

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K. Foreman-1500 pies and they have tried to work out different delivery options.  
S. Budrow-They have a residential kitchen. If the board wants to go forward you can do an administrative review in a year to see if there are any issues.  
K. Foreman-Ok that sounds good and we are trying to be sympathetic to people trying to make a living and not to make an impact on the neighbors.

E. Van Keuren made a motion to close. T. Hurrie seconded the motion. Motion carried 5-0  
E. Van Keuren made a motion to approve. P. Murphy seconded motion. Motion carried 5-0

Findings:

1. Testimony that volume is approximately 2000 pies a year.
2. They have a residential kitchen.
3. No outside employees. Family run business.
4. Deliveries are confined to the state and personally delivered by applicant
5. Testimony was that the business is only 10% of their gross floor area.
6. Testimony that they control the delivery times of product.
7. There was a letter verifying that they met the requirements of the fire department and a residential kitchen doesn't require approval.

Conditions:

1. No more than 20 deliveries of product to site in a year
2. There will be a one year administrative review of this special permit by the Board
3. The Ellis's will keep a log of # of pies and when the deliveries of products are
4. Keep the deliveries between 9am and 3pm on Tuesday and Fridays
5. Meets the requirements of 240-162 A through E

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*Continuations #070-17 Leemilts Petroleum, 40 Davis Straits, Falmouth, Urgent Care Facility*

Voting Members- K. Foreman, T. Hurrie, E. Van Keuren, R. Dugan, G. Potamis

Ken Caputo- I am with Caputo project delivery solutions. I am here with Phoebe Slater, Nora and Dave Sanderson from Convenient MD and Atlantic Investments. We are here on the continuation regarding 40 Davis Straits. Convenient MD Provides quality, convenient and affordable care. It provides options to Emergency rooms hospital affiliated urgent care. The copay is lower, offering cost saving to the community. They have community service, partnership and promote and I think Falmouth will enjoy having them. As far as the zoning matter we are here for special permit because we want to build the building within the front set back. I will show you how we can do that with a special permit. The existing site is of an old gas station at 40 Davis Straits. The tanks were removed and we would like to repurpose this site. In context we are just another example of mostly paved lot. We hope to change that by adding significant amount of green space. The property is significantly over the lot coverage standards for this zone. We are going to bring it down to less than 70% we seek to really clean up the corner. You will see the pump canopy is over 4 1/2 feet from the property line so this is a preexisting nonconformance and this is what we are in here to talk about the special permit process. We seek to improve it. But we have other site. We do have the ability to build the property with the setbacks but that would require the parking in the front and that does not meet what we want to do. I am going to highlight some changes. There was concern about not having enough room in that parking space to get out ok so we did move the dumpster back to satisfy this. There is going to now be a solid enclosure and added landscaping around the perimeter. On the backside we also added landscaping. This will help green up the area. Original proposal just over 5100 s/f we are adding spacing to the attic for storage we are adding 750 s/f to that. The zoning requires 24 spaces we have already planned for 30 spaces. This building has room to slide back but we would lose parking in the back. The more parking in the rear is favored however. Almost half of our parking is in our rear parking lot with some more to the side. Net front set back is changing from 4 1/2 to a proposed 15 feet instead of pushing the building all the way back to 35 feet. Other features we've done are trees proposed on our frontage lines. We have mass area of front yard space. We have consolidated curb cuts and increased pedestrian and bicycle accommodations. Rebuilding the sidewalks. The other big change is the architectural design. We went through and extended review and worked together with the planning board and the community. We still have our front entrance and our front accent feature just been turned into gables here. Prior design was a flat line now a pitched roof. Wooden columns. Window treatments have changed a bit on all elevations. With the attic space we did have to change the height. We lost some opportunity for storage space. It is still at a height presented to you before. Minor change to the elevation just so that in the event they need the storage space it is part of the approval and they can access it. Finally the design is consistent with studies and goals in town. Allowing the special permit will not negatively affect the neighborhood.

T. Hurrie- What happened with the storm water drainage?

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K. Caputo- Yes we talked to engineering. The driveway it's sloped and we have catch basins and it is a low area. There is actually a filter strip in the stone. Engineering was satisfied.

E. Van Keuren- Big Improvement. Looks good.

G. Potamis -Looks good

P. Murphy- It's fantastic

R.Dugan -Why the right turn only onto Main Street?

K. Caputo- In studies on the town there may be lights going in at the intersection of Dillingham so we don't want people taking left turns. We rather set it up to not be a problem.

K. Foreman-What is the current set back from?

K. Caputo- Proposed is 15 feet and 35 is the current zoning. 4 feet currently so this is a substantial improvement.

G. Potamis motioned to close. E. Van Keuren seconded the motion. Motioned carried 5-0

G. Potamis motioned to approve. T. Hurrie seconded the motion. Motion Carried 5-0

Findings-

1. Improved curb cuts
2. Drainage was worked out with the town engineer and improved
3. The use as an Urgent Care serves the community
4. Improvement to the existing nonconforming front yard setback from 4 feet to 15 feet.
5. Planning board approved under Site Plan Review
6. Meets 240-16

Conditions-

1. Per plan
2. Height Certification prior to final sign off of construction

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*#079-17 Bucchanio, 348 and 350 Old meeting House, East Falmouth*

Voting Members- T. Hurrie (chairman), G. Potamis, R. Dugan, E. Van Keuren, P. Murphy

Kevin Klauer- I represent the applicant Joseph Bucchanio. The owner of 350 Old Meeting House Road and JB landscaping. We present to continue an appeal of the building commissioners decision. They property we are looking at is 350 Old Meeting House Road. My applicant has recently purchased 348 Old Meeting House Road. He has obtained a special permit from the planning board as a contractor's yard for his landscaping and tree clearing business. In connection with this contractors yard he seeks to prepare firewood at the site. Section 240-37E allows for the portable woodworking mill as an accessory use in the agricultural district. The building commissioner stated that the use of a portable wood mill does not allow for splitting of wood into logs for firewood sale. That is why we are here. The portable woodworking mill is defined as equipment for producing lumber from logs without permanent installation the only practical difference is when the saw mill cuts for construction use it is cut horizontal. Firewood is cut up. The matter is that the building commissioner feels that lumber refers exclusively to construction material. The use of wood does not allow for the splitting in this agricultural district and the bylaw does not define this. The board wanted examples of cases and I couldn't find any case law in Massachusetts that really define the difference between lumber and firewood or that distinguish between both in a zoning context. Some cases make references that lumber and firewood are interchangeable terms so I submitted an Oregon Supreme Court case which does refer to certain grades of lumber. There was a question raised about this being an accessory use. As noted the applicant obtained special permit from the planning board for a contractor's yard to run his landscaping and tree business. Splitting of wood through the use of a portable wood mill is accessory to the permit in use. What he is asking is to specifically address this use and byproduct. They are taking product from another site and bringing it here. The applicant has no intent to operate on a large scale. He wants to make a waste product into an asset. He has a storage area that is 60X50 feet. On average he sells about 100 cords of wood a year. We are talking about 30-50 hours a year; this is a small accessory use. This is a small operation not commercial. The equipment is 40 horsepower. I obtained some pictures of a similar model of what the applicant uses. You will see that the size of the saw mills is very similar in size engine and impact. Given the permit uses on the site. The only real difference is the direction of splitting of the wood. I think we should look at why this makes sense. The reason I'm telling you I have never once milled construction. I have split wood. I don't believe the bylaw is excluding. I am asking the board to overturn the building commissioners concern

G.Potamis-Is it zoned agricultural?

K. Klauer -He intends to use this as an accessory to the contractor's yard. It is a byproduct and my client wants to make them into an asset.

T. Hurrie-These multiple lots are all zoned by agricultural?

K. Klauer- It is. He is not looking to split wood on the front. 3 Separate lots got merged. We are talking about this small lot on the bottom right and that is where the trees are growing. Yes it is zoned

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T. Hurrie- Does zoning allows this even if it is a separate lot?

K. Klauer- I think that long term goal is to grow on the other lots as well. So yes I believe so.

R. Dugan- Has the explanation then changed that it is not an accessory?

K. Klauer- It has been clarified what the short term and long term use. We can talk about it being accessory eventually to the agriculture I but in the short term the contractor's yard is allowed to have an accessory. Most of the wood is going to come from the contractor's yard usage.

I don't know why we couldn't split trees. Coming from 348 to 350 or merge lots if we chose too.

S. Budrow- Last time you said trees will be coming from other sites?

K. Klauer- When he is landscaping at other sites. Much like a contractor yard. Which allows for this.

E. Van Keuren- Machinery is small

Public Comment:

Mike Dasouza I'm in full support of what he has done or wants to do on the lot. I'm the VP of the skeet club on abutting property.

K. Klauer- There was a few letters of support that were submitted. Please have board discussion prior to closing.

P. Murphy-This is tough one. I agree with the building commissioner that this is not a saw mill as outlined in the bylaw. The bylaw may be old. This may need to be change the bylaw to include wood splitting as an accessory call. I think he made the correct decision. I don't think it's one and the same.

G. Potamis- Given the testimony of the vagueness of the definitions how do you come to that.

P. Murphy It is very close but I don't think it's what the bylaw means when the included the term sawmill. I think he were to articulate that at a town meeting maybe the bylaw could be amended to include this. But for now I am going to go with the building commissioner

R. Dugan-I haven't heard any new information to change my mind to not support the building commissioner.

G. Potamis -If they eliminate the property line do you still go with the bylaw?

R. Dugan- Yes I think so. You are talking Years of growth before you can harvest.

S. Budrow- The appeal is about splitting logs. Vs milling

R.Dugan- Visually there is a difference between milling and splitting logs.

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G. Potamis -I am leaning in favor of overturning the building commissioner's decision

E. Van Keuren- In favor of overturning the decision because of what they supply. There is no milling here.

T. Hurrie- I support the Building Commissioner even if t zoning law is archaic but it's still there. I agree they may need to go in front of the town and see if they can change to bylaw.

G. Potamis- I don't think I could convince the members. But I do think times have changed

K. Klauer- The bylaw isn't that relevant. I showed that case to show that the term lumber and firewood are interchangeable. The 1947 bylaw has been carried included portable saw mills and it has been carried since then. I don't know what the town meeting discussion was when it was written. I know what I think about milling vs splitting wood. I think they are different. I have 3 people that don't agree which is a steep hill to climb. Is there any more information I can provide? The byproduct can be made productive. In a way that is natural. I do not think this is any different.

T. Hurrie - I don't think we need time to provide more information. You provided a lot of information on what he envisioned on the property and I know there was not much case law and we do appreciate the time and effort in finding the cases.

P. Murphy-He did a fantastic job. But that language needs to change in the bylaw.

R. Dugan made the motion close. G. Potamis seconded the motion. Motion carried 5-0

R. Dugan made the motion to uphold the business commissioner's decision. P. Murphy seconded the motion. Motion fails 3-2 (Members Dugan, Murphy and Hurrie voted to uphold Bld Commissioner determination; and Members Potamis and Van Keuren in opposition to Uphold Bld Commissioner's determination).

Appeal is denied (lack of super majority vote)

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*#086-17 The Climate Foundation, 3 little Harbor Rd. Woodshole*

Letter requesting to continue the hearing to March 15, 2018

T. Hurrie motioned to continue the hearing to March 15, 2018 at 6:30 PM in the Selectmen's  
Meeting Room. E. Van Keuren seconded the motion. Motion carried 5-0

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**Open Meeting**

*December 7, 2017 Minutes*

G. Potamis moved to approve. P. Murphy seconded the motion. Motion carried 5-1 with K. Foreman abstaining.

*December 14, 2017 Minutes*

G. Potamis moved to approve, E. Van Keuren seconded the motion. Motion carried 5-1 with K. Foreman abstaining.

*Board discussion BOS Joint Meeting*

K. Foreman - Joint Meeting with Selectmen and other Regulatory Boards is coming up on January 27th. A draft agenda was circulated.

G. Potamis-I asked that the affordable housing committee be invited to speak on the discussion of the accessory apartments.

K. Foreman-The only thought I have is that it is really board of selectman show. I'm concerned there may be too many boards involved. I think there are just too much. It is an open meeting. Anyone can go.

G. Potamis- I think as an individual I may comment on the agenda further

S. Budrow-The Board can discuss if they want to

K. Foreman-I think they are large enough and they are open meetings and anyone can attend.

G.Potamis -I think it might be an oversight to not make sure that the affordable housing committee be invited.

S. Budrow -The bylaw is the bylaw. We know the issues that have come up with it that really do not have to do with the affordable committee but with water quality issues.

G. Potamis- If a separate building that is not on a sewer or redoes the septic system

S.Budrow-Board of Health do not look at it as an accessory regardless even if there is not an increase in bedrooms.

G. Potamis- I think that could adversely affect affordable housing

K. Foreman- There was one specific language concern, and the affordable housing committee should go. The interpretation is in the bylaw. I'm sure the intent as it was written was if you're in a coastal pond overlay, an accessory building is going to be subject to that bylaw. It is a generic issue. I think it is a small wording change.

S. Budrow- I know two people from the affordable housing board will be going.

The board instructed Sari Budrow to write a letter to the Board of Selectman to ask the affordable housing committee to attend the meeting on 1/27/17

Respectfully Submitted by Meghan Petitti, Recording Secretary.