

**Falmouth Planning Board  
Selectmen's Meeting Room – January 15, 2019  
Regular Meeting - 6:30 pm  
MINUTES**

*Present:* Jim Fox, *Chairman*, Pat Kerfoot, *Vice Chairman*, Paul Dreyer, *Clerk/Secretary*, John Druley, Robert Leary, Charlotte Harris

*Absent:* Pamela Harting-Barrat

Chairman Jim Fox called the meeting to order at 6:30 PM.

**MINUTES:** January 8, 2019

**MOTION** by P.Dreyer/R.Leary to approve the minutes of January 8, 2019 as corrected.

**Voted 6-0-0**

J.Fox - Acknowledged and Congratulated Corey Pacheco for the appointment of the Assistant Planner position.

**PUBLIC COMMENT**

*None.*

**MOTION** by P.Kerfoot/R.Leary to take the Accessory Housing Apartment Brochure out of order.

**Voted 6-0-0**

R.Leary - I laid out a step-by-step process. The first thing is to read the bylaw and make sure your property comports to the bylaw. How to calculate the square footage and dimensional things. The next thing is to get into design and neighborhood character.

P.Kerfoot - I would like to suggest that you send your ideas for comments to Rod Palmer.

R.Leary - Also in that first step is to check out your septic system.

J.Fox - The most important thing is the architectural look of the home and the 40 per cent of the primary structure.

C.Harris - Will this be a stand-alone brochure or will people have to seek more information? Maybe it gives the bylaw and expands on the bylaw.

**MOTION** by P.Kerfoot/R.Leary to return to the regular agenda.

**Voted 6-0-0**

**PUBLIC HEARINGS CONT:**

6:40pm:

**Planning Board Zoning Articles for Spring 2019 Town Meeting**

***240-193 As-Built Plans***

T.Bott - Attorney Robert Ament had some suggestion, and we tried to incorporate those suggestions. New Subsection C would read: No certificate of occupancy shall be issued until an as-built plan, prepared by a registered land surveyor, professional engineer, or registered landscape architect has been submitted and verified by the Planning Board's designee within 7 days of As-built submittal that all conditions of approval

have been met, *but for reasonable cause, such as coordination with other work, seasonality, or approved project phasing, the Planning Board or its designee may authorize issuance of a certificate of occupancy or a temporary or partial certificate of occupancy, where the required work, or a phase thereof, is substantially complete, and where satisfaction of all remaining conditions of approval is adequately assured by a recorded covenant, an adequate bond, or another performance guarantee.*

P.Dreyer - If a project is substantially complete, by the time you get a recorded covenant or bond, wouldn't the project be complete?

T.Bott - There are three documents that you can provide for Subdivision Control surety. In the case of Site Plan, there isn't. How do we deal with things like the ground too frozen to put the landscaping in?

C.Harris - This seems very overly broad. This is a barn door they could go through here. This seems more broad than what was proposed.

R.Ament - the original language proposed by the Planning Board didn't say substantially complete, there was no flexibility. It said all conditions of approval met. Buildings will be phased. That phasing will be approved by the town. There has to be a provision. It makes no sense if a project is finished in December and you can't install trees and bushes.

J.Fox - That decision lies in our hands. If we don't like it, we don't do it.

C.Harris - Leave reasonable cause and don't identify it.

R.Ament - You don't have a definition of what reasonable cause is.

J.Druley - What was the impetus for this?

T.Bott - This Came from the building commissioner. They expect buildings but not the site.

J.Druley - This will help strengthen the building department.

Michael Borcelli - I think this is very well written.

P.Dreyer - Getting a temporary occupancy gives no incentive to finish the project. I can live with this but I am a little uncomfortable that we give up the pressure to finish.

R.Leary - I would like to see some time frames.

T.Bott - You want a bylaw without examples in it.

#### ***240-225 Notices for Bylaw Amendments***

T.Bott - The state does not require notification to abutters. We want to remove the words "certified mail." We will still be mailing abutter's notices.

C.Harris - There was a problem at Town Meeting with explanations This is not as clear as it could be. It will accord with state law and will save money for the town. These reasons should be stated up front.

**MOTION** by P.Kerfoot/C.Harris to recommend this to the Warrant as printed.

**Voted 6-0-0**

#### ***240-68 Maximum Setbacks from Street Frontage***

T.Bott - The revised subsection will read: Minimum setbacks from the street frontage shall be 25 feet, however in the General Residence, Business 2 and Business 3 Districts there shall be a 30 feet maximum front setback.

T.Bott - Staff's recommendation is 30 feet maximum setback. We are not amending the exceptions. Mr. Ament suggested: Except as allowed by special permit, on the General Residence, Business 2 and Business 3 Districts, there shall be a 35 feet maximum front setback for other than single or two-family dwellings. Minimum setbacks from the street frontage shall be 25 feet.

R.Leary - We brought up having no minimum setback with form-based code. The size of the lot will dictate certain things like that.

P.Kerfoot - I am sensing unease here, I would like to take more time to understand how this would play out.

C.Harris - It looks as if you wind up with a minimum and a maximum. It is not clear here that there is no minimum. It doesn't say that we are replacing the minimum with a maximum.

T.Bott - It depends on what district you're in. There is no minimum in B2 or B3.

C.Harris - That's what I don't think is clear.

T.Bott - We will not be submitting that for the Warrant.

### ***240-250 Medical Marijuana Dispensaries***

T.Bott - We signed a host agreement with an entity that is not a not-for-profit. The Department of Public Health dropped the not-for-profit in December 2017. We got rid of the words "not for profit" so that we would not have any inconsistencies with state regulations. Everything in our bylaw that references the Department of Public Health is wrong. The administration oversight is now the Cannabis Control Commission. We have added the word "medical". We are changing the CMR. Our bylaws prevent medical from becoming recreational.

Amending 240-250B Definitions: of Medical Marijuana Treatment Center / Registered Marijuana Dispensary so the bylaw will be consistent with the regulations adopted for such facilities by the Massachusetts Department of Public Health. (105 CMR 725.000) as called for in the Zoning bylaws Purpose section deleting the words "not for profit" and noting the transfer of administration and oversight by the Commonwealth of Massachusetts from the Department of Public Health to the Cannabis Control Commission. Very simple: we are striking the words not-for-profit, adding the words Cannabis Control Commission, and changing the CMR. Our bylaws prevent medical from becoming recreational; Section 156-15 and 240-18.

J.Fox - Could we have some language in there about the state so we don't have to change our bylaws all the time?

Justin Lundberg, Nature's Remedy - My suggestion would be to put *or successor legislation*. IT's going to keep changing.

C.Harris - I think the Warrant Article title is more provocative than it needs to be. If it read amend the medical marijuana bylaw to be consistent with Massachusetts regulations, it lowers the temperature of the whole transaction. We are just amending it to be consistent with the State.

J.Druley - I think the language Town Meeting will be looking for will protect having to recreational marijuana.

J.Lundberg- The Town would need to come back and revote, change the zoning.

**MOTION** by R.Leary/C.Harris to recommend to the Warrant as printed.

**Voted 6-0-0**

6:50pm:

**Applicant: The Burton Trust, Slade M. Burton and Janice A. Burton, Trustees – Special Permit application to construct a mixed-use building (first floor offices and two apartments above) with lot coverage by structures, parking and pavement of 69.4%, located at 160 Katharine Lee Bates Road**

Attorney Robert Ament - We prepared a plan showing the driveway to be 16 feet wide. We slightly moved the location of the trash bin enclosure. The present driveway is 13 feet wide. There is no parking on this. We are not reducing parking. There is parking available in the vicinity of the site. We moved the windows.

J.Fox - I like the balance.

C.Harris - Looks good.

P.Kerfoot - 16 feet seems ok.

**MOTION** by C.Harris/P.Kerfoot to recommend a positive recommendation.

J.Druley - I am recommending a width of 22 feet.

**Voted 6-0-0**

**Planning Board Zoning Articles for Spring 2019 Town Meeting**

**240-193 As-Built Plans**

T.Bott - Here is my recommended language: No certificate of occupancy shall be issued until an As-built plan, prepared by a registered land surveyor, professional engineer, or registered landscape architect has been submitted and verified by the Planning Board’s designee within 7 days of As-built submittal that all conditions of approval have been met, but for reasonable cause the Planning Board or its designee may authorize a temporary or partial certificate of occupancy, where the required work is substantially complete and is adequately assured by a performance guaranty of the Board’s choosing.

**MOTION** by P.Kerfoot/C.Harris to recommend the Warrant as written.

**Voted 6-0-0**

**PLANNING BOARD DECISION:**

7:00pm:

**Applicant: Falmouth Housing Trust – Special Permit application to modify Condition 1 of a Special Permit Decision issued December 8, 2004, to Albert Shamsi, Trustee, which allowed a density bonus of two (2) lots (Lots 9 and 10 on Pam’s Way).**

T.Bott - I do not have a decision ready for this, we will see this next week.

**PLANNING BOARD DISCUSSION:**

**Accessory Apartment Housing Brochure**

**Committee Reports**

C.Harris - The multi-family planning group has questions. I am wondering where are we on this.

J.Fox - We had a deadline for the Cape Cod Commission to pick up this and give us an RFP.

***Davis Straits Multi-Family District***

**GENERAL CORRESPONDENCE**

Letter from Mark Cool

**FUTURE AGENDA ITEMS**

**NEXT MEETING:** January 22, 2019

**MOTION** by P.Dreyer to adjourn at 8:12.

Respectfully Submitted,  
Paul Dreyer, Clerk/Secretary  
Sheri Theroux, Recording Secretary