



TOWN OF FALMOUTH

ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540
508-495-7460 – FAX 508-495-7463

Zoning Board of Appeals
Attn: Board Members
59 Town Hall Square
Falmouth, MA 02540

February 6, 2019

RE: Minutes for Public Hearings and Open Meeting held on January 31, 2019 at 6:30 PM in the Selectmen's Meeting Room in Town Hall.

Dear Board Members:

The attached minutes as referenced above are respectfully submitted for the Board's approval and to be filed with the Town Clerk:

6:30 PM continuation(s):

#075-18 George, 108 Gansett Road, Woods Hole

#101-18 Burton, Trustees, 160 Katharine Lee Bates Road, Falmouth

New Hearings:

#116-18 RVK Real Estate, LLC, 372 Maravista Avenue, Teaticket

#117-18 Jones, Trustee, 65 Shady Lane, Hatchville

Open Meeting:

1. Minutes January 17, 2019
2. Board Administrative Request – Savon Hatem LLC, 561 Thomas B. Landers Rd., E.Falmouth – Mod. of SP #028-18 to allow fuel storage tank to be installed underground
3. Board Updates
4. Discuss Date for Future Workshop
5. Board Discussion RE: Zoning Recodification Committee
6. Future Agenda Items

Terrence Hurrie, Chairman, Board of Appeals: _____

RECEIVED
FEB 22 2019 AM 10:32
TOWN CLERK

Date Minutes filed with Town Clerk: _____

Town Clerk Stamp

Respectfully submitted
Joanne Robbins, Recording Secretary
Noreen Stockman, Zoning Administrator

January 31, 2019 – 6:30 PM

Minutes

**Board of Appeals Public Hearings & Open Meeting
Selectmen's Meeting Room – Town Hall, Falmouth**

PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

6:30 PM

Chairman Hurrie called the meeting to order at 6:30 P.M.

Chairman Hurrie appointed G. Potamis and R. Dugan as alternate voting members and E. Van Keuren as Acting Clerk.

A Motion was made by R. Dugan to take Open Meeting Agenda Item No. 2, Mod. of SP #028-18, out of order. **Second:** E. Van Keuren.

Motion passed 4-0.

Open Meeting Agenda Item No. 2

Board Administrative Request – Savon Hatem, LLC, 561 Thomas B. Landers Rd., Falmouth – Mod. Of SP #028-18 to allow fuel storage tank to be installed underground

Voting Members: T.J. Hurrie, E. Van Keuren, G. Potamis, R. Dugan

Halim A. Choubah, the Applicant's consulting engineer, spoke on behalf of the LLC:

Mr. Choubah said the property is a two-acre site in the light industrial zone. Five years ago the Applicant came before the Board for a special permit to construct a 5,000 sf building. The project was approved, built, and has been in operation since. Last year the Applicant came before the Board for a special permit to install an 8,000 gallon above-ground diesel fuel tank to fuel his business trucks. The permit was granted, but the Applicant now requests the permit be amended, to allow the installation of an underground storage tank. The underground tank would eliminate the need for fencing, minimize spillage, leakage, and potential vandalism, and will be operated by gravity, by hooking the hoses from the tanker, to the tank. The consultant said the tank will be 100' from the building, not interfere with utilities, and have no change on parking as approved. The Applicant has approval from the Select Board for the underground tank, which will be double-wall fiberglass, with continuous monitoring in compliance with local, federal and state regulations.

Board Comments and Questions:

The Board asked if the applicant received all of the recommendations by the Fire Dept., Engineering and Board of Health, and noted that a recent site visit revealed one truck parked too close to the building, where the Fire Dept. recommended no closer than 18'. The consultant said he has the Fire Dept. recommendations, and will follow those.

A Motion was made by R. Dugan to allow the modification of SP #028-18, to allow a fuel storage tank to be installed underground. **Second:** E. Van Keuren.

Motion passed 4-0.

January 31, 2019 – 6:30 PM

Minutes

**Board of Appeals Public Hearings & Open Meeting
Selectmen's Meeting Room – Town Hall, Falmouth**

PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

Chairman Hurrie allowed a five minute break at 6:44 P.M., and the meeting resumed at 6:46 P.M.

Chairman Hurrie advised the applicants, and public in attendance, that due to the four-member board, all votes on special permits must be unanimous to pass.

Continuation(s):

#075-18 George, 108 Gansett Road, Woods Hole – Special permit to raze and reconstruct 2 dwellings with garages, and create an accessory apartment in new guest house

Voting Members: T.J. Hurrie, E. Van Keuren, G. Potamis, R. Dugan

Chairman Hurrie asked Attorney Laura Moynihan, representing the Applicant, if she agreed to proceed with a four-member board. Attorney Moynihan agreed.

Acting Clerk E. Van Keuren read the Notice of Public Hearing into the record.

Referrals:

- Engineering- standard comments
- Board of Health- not subject to an enhanced nitrogen system
- five letters in opposition
- three letters with comments and concerns

Others in attendance for the Applicant: Mike McGrath from Holmes and McGrath; Hart and Associates Architects, Matthew Cunningham

Attorney Laura Moynihan for the Applicant:

Attorney Moynihan said the Applicant requests leave to withdraw the request for the accessory apartment without prejudice. Moynihan also noted that a report was filed by the historical planner 1-30-2019. Ms. Moynihan presented to the Board a certificate from the Town Clerk, stating that the structures are not deemed to be of historic significance.

Moynihan said the property is a very large lot on Gansett Point with 3.6 acres of waterfront and two dwellings, built in 1920. The existing 11,000 sf main dwelling has nine bedrooms and the 3,907sf guest dwelling has three bedrooms. The westerly side of the property, by the water, is in flood and velocity zones. The Premises is under the jurisdiction of the ConCom because of the expansive nature of the environmental condition. Pursuant to §240-3, both dwellings have been

January 31, 2019 – 6:30 PM

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Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

in continuous use, without interruption. The property is in RAA Zoning District and not in a Water Resource Protective District or a Coastal Pond Overlay District. Lot coverage by structures is 4.2%. Lot coverage by structures, pavement and other appurtenances is 16% and conforms to current setbacks. The existing guest house is a nonconforming because there are two dwellings on one lot. The septic system has failed, and the coastal bank is significantly eroded. The Applicants and their architect have worked to address concerns regarding the three letters in the file. One of which was the accessory apartment, which was removed on revised plans. The second issue was the curb cut and the second driveway, which has also been removed. The setback from the southerly lot line is increased by 20 feet, bedrooms have been reduced by two, guest quarters will be converted to a pool house with two bedrooms. A kitchenette and half bath, originally proposed, have been removed from the plans. The proposed height of the main dwelling is 35'. The garage is 1,024sf. The height of the five-bedroom proposed guest dwelling is 24.06' at two stories, slightly less than the 26.1' shown on the plan, because of the proposed down grade. There will be a new Title V septic system, improved storm water systems, and limited visibility of the project from Gansett Road, because of proposed landscaping and change of grade. Utilities will be sited underground, and new fencing installed. The coastal buffer restoration will include more than 28,000 sf of planting area, with native shrubs. 6,000 sf of lawn will be converted to buffer plantings, and over 1,600 new native woody plants will be added in the coastal buffer area, to increase bank stabilization, reduce erosion and increase filtration. The plan has been approved by the ConCom and an Order of Conditions is on file. Landscaping improvements are substantial and the existing lawn will be reduced by 60%, preserving a healthy canopy of trees. Screening will be increased with a new understory of trees and shrubs, adding more than 50 new native trees. The natural pool (pond) will be put in, filled with irrigation and drain water. Non-conforming structures or uses are in harmony with, and will create a beneficial impact on, the neighborhood. The project complies with §240-216. Objection letters from neighbors have been addressed, and the Gansett Trust issued a letter that states it has no further objections. The property at 102 Gansett has been acquired by the Applicant, negating the two letters filed by the former abutter. Private restrictions regarding the caretaker apartment limitations, as referenced in letters from two other neighbors, are not relevant because the dwellings have been in existence before those restrictions were put in Town Code.

Board Comments and Questions:

The Board asked for more detail on the pool house, as the plan shows two bedrooms and a dining room. Attorney Moynihan said the pool house is for the Applicant's adult children, and visiting families. The Board asked if the Applicant would be amenable to a restriction that no kitchen would be added to the pool house. Attorney Moynihan agreed, and added that all non-conformities, except for the two dwellings on one lot, would be eliminated with the proposed plan. Moynihan added that there is a change of height with the guest house, but because of the change in grade, it is technically unchanged.

January 31, 2019 – 6:30 PM

Minutes

Board of Appeals Public Hearings & Open Meeting

Selectmen's Meeting Room – Town Hall, Falmouth

PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman

ABSENT: Kenneth Foreman, (Vice Chairman);

Public Comment: None

A Motion was made by R. Dugan to close the hearing. **Second:** E. Van Keuren.
Motion passed 4-0.

A Motion was made by R. Dugan to approve the plans as revised. **Second:** E. Van Keuren.
Motion passed 4-0.

Findings:

- Meets the standards of §240-3 and §240-16.
- new Title V septic system
- underground utilities
- no new non-conformities
- approval on file from ConCom with Order of Conditions
- significant evidence that the two dwellings have been in uninterrupted use pursuant to §240-3A
- extensive landscaping plans and improvements
- Guest house is 24.06' based on grade change, and will remain the same as the existing height.
- Applicant has met with neighbors and abutters, and changed plans to address concerns.
- Application for Accessory Apartment has been withdrawn; therefore, it no longer needs site plan review.
- Property is not listed with the Town as having historic or cultural significance.

Conditions:

- Per updated plans to be provided
- Pool house was revised to remove kitchen and/or cooking facilities, and half bath has been removed.

January 31, 2019 – 6:30 PM

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Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

#101-18 Burton, Trustees, 160 Katharine Lee Bates Road, Falmouth – Special permit to construct 2.5 story building, retaining a portion of existing building, for mixed use w/parking reduction

Voting Members: T.J. Hurrie, E. Van Keuren, G. Potamis, R. Dugan

Chairman Hurrie asked Attorney Robert Ament, representing the Applicant, if he agreed to proceed with a four-member board. Attorney Ament agreed.

Acting Clerk E. Van Keuren read the Notice of Public Hearing into the record.

Referrals:

- Engineering- two pages of comments
- Water Dept.- adequate service on site
- Planning Dept. - a detailed review was conducted on November 9, 2018; Site Plan Approval 1-28-2019
- Fire Dept.- letter in file requesting a Knox Box access
- three letters in support
- one letter with concerns

Attorney Robert Ament, for the Applicant:

Attorney Ament said that since the hearing before this Board on December 14th, the Applicant has completed the Planning Dept. process. The Applicant proposes to retain and reconstruct a dated one-story office building, formerly used as an optometrist office, located on Gifford Street and close to downtown and other business. The proposed plan is for a mixed-use building, with the same square foot area of offices on the first floor, but with modern updates, and two apartments added above. Ament said he is not here for a special permit, as both uses are by right, but the existing building is only four feet from the side yard lot line. The proposed building will be 10 feet from the sideline, set back a little farther from the street, and with a landscaping buffer on the north and west sides. Existing parking is also non-conforming, and the special permit will reduce parking, from 12 to nine spaces. The building is going from 19.6% to 22% lot coverage, which includes an overhang, stairs and balcony in the back. Lot coverage by parking and structures was 69.4% and will be slightly improved at 68.8%, and is approved by Planning. Traffic impact is de minimus. The project is more attractive, and beneficial to the neighborhood character. Window arrangements were changed at the request of Planning and that Board also required the Applicant to add a new, adequate septic system, as the property is not on town sewer. A Decision that contains the same wording as in the Planning Dept.'s Motion was filed on Tuesday this week. A landscape plan shows that trees, shrubs, perennials and grasses will be installed.

January 31, 2019 – 6:30 PM

Minutes

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PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

Board Comments and Questions:

Chairman Hurrie asked Attorney Ament why the Applicant did not consider to raze and reconstruct the building. Attorney Ament said the Applicant is retaining and using existing floor joists and framing, and a significant portion of the structure on the first floor will be retained. The building character is interesting, and the interior space being retained is valuable. None of the new construction is non-conforming, and the existing nonconformity will be retained. Ament talked about case law about razing versus retaining an existing structure, and referenced a subsequent local project and related court decision.

A Motion was made by R. Dugan to close the hearing. **Second:** G. Potamis.
Motion passed 4-0.

A Motion was made by G. Potamis to approve the plan. **Second:** E. Van Keuren.
Motion passed 4-0.

Findings:

- Planning Dept. approval pursuant to §240-69D and §240-216
- Increased westerly side yard from four to ten feet
- eliminating front yard setback
- enhances utilization of property
- reduction in parking from 12 to nine spaces
- Proposed mixed use is in harmony with bylaw.
- Lot coverage by structure includes stair and overhangs.
- new septic system
- reduced driveway width per abutter concerns
- Testimony submitted for reasons to retain portion of building instead of raze and reconstruct

Conditions:

- Per updated plans

The Chairman called for a five minute break at 7:45P.M. and called the meeting back to order at 7:52 P.M.

January 31, 2019 – 6:30 PM

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PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

New Hearings:

#116-18 RVK Real Estate, LLC, 372 Maravista Avenue, Teaticket Mod. of special permit #051-17 to construct small addition and minor alterations

Voting Members: T.J. Hurrie, E. Van Keuren, G. Potamis, R. Dugan

Chairman Hurrie asked Attorney Kevin Klauer, representing the Applicant, if he agreed to proceed with a four-member board. Attorney Klauer agreed.

Acting Clerk E. Van Keuren read the Notice of Public Hearing into the record.

Referrals:

- Engineering - concerns about runoff into driveway
- Board of Health – property is on town sewerage
- Water Dept. – existing system is a one-inch main

Attorney Kevin Klauer for the Applicant:

Attorney Klauer said the Applicant wished to modify the existing special permit and alter the plans. The lot is a 12,000 sf lot in Res Zone C. The existing two-story dwelling has four bedrooms and 17.8% lot coverage. There was a previous question about and subsequent determination that Maravista Avenue would be the front yard. The property line is 16.6 feet from Maravista Ave. where 25 feet is required. The Applicant seeks a modest change of the special permit by removing the bulkhead and A/C unit on the easterly side and removal of a stairway and adding new stairs on the easterly side of the house. The addition on the easterly side will accommodate an expanded kitchen and bathroom and the rear yard setback will be improved. There will be no new non-conformities created and lot coverage will be 18.6% where 20% is allowed. The Applicant's engineers are working with the Town Engineer to address drainage issues.

Board Comments and Questions: None.

Public Comment: None

A Motion was made by R. Dugan to close the hearing. **Second:** E. Van Keuren
Motion passed 4-0.

A Motion was made by R. Dugan to approve the plan as modified. **Second:** E. Van Keuren.
Motion passed 4-0.

January 31, 2019 – 6:30 PM

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PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)

And Zoning Administrator, Noreen Stockman

ABSENT: Kenneth Foreman, (Vice Chairman);

Findings:

- complies with §240-216
- enhances utilization of the property
- improves setbacks
- Building Commissioner confirms the front yard is on Maravista Avenue.
- Applicant to meet with Town Engineer to address drainage issues.

Conditions:

- Per plans
- Applicant agrees to work with and follow recommendations of Town Engineer regarding drainage.

January 31, 2019 – 6:30 PM

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PRESENT: Terrence J. Hurrie (Chairman); Edward Van Keuren, Member;
Gerald Potamis (Associate); Robert Dugan (Associate)
And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

#117-18 Jones, Trustee, 65 Shady Lane, Hatchville Special permit to construct addition creating habitable space

Voting Members: T.J. Hurrie, E. Van Keuren, G. Potamis, R. Dugan

Chairman Hurrie asked Tom Bunker of BSS Design, representing the Applicant, if he agreed to proceed with a four-member board. Mr. Bunker agreed.

Acting Clerk E. Van Keuren read the Notice of Public Hearing into the record.

Referrals:

- Engineering – standard comments
- ConCom - project approved at January 23, 2018 meeting. An Order of Conditions will be issued
- Health Dept. - Property is in Zone 2 but septic is not – increase in bedrooms is allowed.
- Water Dept. – recommends installation of a one inch service
- one letter from abutter, Samuel Paikowsky (Acting Clerk E. Van Keuren read the abutter's letter requesting screening by vegetation.)

Tom Bunker, BSS Design, for the Applicant:

Mr. Bunker said the Applicant requests a special permit to add an addition to a dwelling that fronts Crooked Pond to the west and is 39' from the pond where 50' is required on this 19,800 sf lot. The existing lot coverage is 8.71%. With regard to the Health Dept. mention of Zone 2, part of the lot is in Zone 2, but the existing septic is not, and the applicant is upgrading the septic to allow four bedrooms. The house has an unfinished basement, a garage slab with a breezeway connector, one bedroom on the first floor, two bedrooms on the second floor, and one bedroom and bath is proposed in the 550 sf single-story addition. There will be no second floor in the addition. The new four-bedroom septic system will be as far from the pond as possible. No vegetation must be removed from the lawn. The one bedroom addition presents very little visibility from the street, and no impacts to views and vistas and traffic. Drywells will be added to drain roof runoff.

Board Comments and Questions:

The Board asked if the Applicant proposed addressing concerns of the abutter. Mr. Bunker said there is no house on the neighbor's ten acre lot, the proposed project is 38.9' to the north side lot line of the property. The forest is deciduous, and there should be no requirement to provide planting screening, as the addition is less tall than the existing dwelling, and the abutter does not reside on the vacant lot. The Board also asked for an updated plan for Sheet A1 that shows labels for the living room, dining room and bedroom.

January 31, 2019 – 6:30 PM

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And Zoning Administrator, Noreen Stockman
ABSENT: Kenneth Foreman, (Vice Chairman);

A Motion was made by R. Dugan to close the hearing. **Second:** E. Van Keuren.
Motion passed 4-0.

A Motion was made by R. Dugan to approve the plans. **Second:** E. Van Keuren.
Motion passed 4-0.

Findings:

- Three bedrooms to become four
- Board of Health says allowed septic system is outside Zone 2.
- new four-bedroom septic system
- better utilization of the property
- Structure coverage from 8.7% to 11.5% is well under allowed.
- complies with §240-216
- Applicant appeared in front of ConCom. Order of Conditions will be issued.
- Plans need appropriate labels on Sheet A1 for the first floor
- Abutter letter regarding screening request is not relevant as addition is 38.9' from side yard and the abutter's property is undeveloped. There is no zoning violation regarding views.

Conditions:

- per revised plans with new labels on Sheet A1
- no more than four bedrooms

January 31, 2019 – 6:30 PM

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Gerald Potamis (Associate); Robert Dugan (Associate)

And Zoning Administrator, Noreen Stockman

ABSENT: Kenneth Foreman, (Vice Chairman);

Open Meeting:

1. Minutes January 17, 2019

A Motion was made by G. Potamis to approve the Minutes of January 17, 2019 as revised.

Second: E. Van Keuren.

Motion passed 4-0.

2. Taken out of Agenda order.

3. Board Updates – The Board is presently at four members, with the recent resignation of Paul Murphy. Congratulations, and best wished to Paul. There is now another opening on the Board, which will be on the agenda of the Select Board's February 11, 2019 meeting.

4. Discuss Date for Future Workshop – Tabled until board vacancies approved.

5. Board Discussion RE: Zoning Recodification Committee –

The Board had a joint meeting on January 26th where the Town Planner mentioned there will be a zoning recodification committee that will include members of the Planning Dept. and two members of the ZBA. The Board expressed concern that it did not receive any prior notice from the Town Planner until the Joint Meeting. Also, there has been no feedback to this Board's previously submitted suggestions regarding the recodification process.

6. Future Agenda Items - The Board reserves the right, by vote, to take items on the above Agenda out of order. Next Scheduled Public Hearings will be held on February 7, 2019 at 6:30 PM – Selectmen's Meeting Room – Town Hall.

Chairman Hurrie adjourned the meeting at 8:25P.M.

Respectfully submitted,

Joanne Robbins, Recording Secretary