



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

April 6, 2020

RE: Minutes for Public Hearings and Open Meeting held on March 19, 2020 at 6:30 PM in the Selectmen's Meeting Room (held virtually via Zoom)– Town Hall Square

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:

096-19 March, 94 Nantucket Ave., Falmouth

091-19 Cumberland Farms, Inc., 400 East Falmouth Highway & 8 Old Meeting House Road, East Falmouth

005-20 Noonan, 183 Surf Drive, Falmouth

006-20 Schubert, Trustee, 23 Ormond Drive, East Falmouth

090-19 Reppucci, 24 Prospect St., Falmouth

Terrence Hurrie, Chairman of Board of Appeals

Respectfully submitted

Ashley DeMello, Office Assistant

Noreen Stockman, Zoning Administrator

RECEIVED

APR 6, 2020 PM 1:38

TOWN CLERK

**Zoning Board of Appeals
Zoom Remote Meeting
Minutes of March 19, 2020 at 6:30 PM
Zoning Administrator: Noreen Stockman
Present: Hurrie, Dugan, Van Keuren, Barry, Morse
Absent: Foreman**

This meeting was held on the Zoom virtual meeting software for remote access, due to the Governor's order suspending public assemblies, during the declared novel corona virus (Covid 19) emergency. The Town Hall was closed to the public.

Due to the very short time frame from the declaration to prepare for the scheduled meeting, the agenda was updated to provide instructions for public participation on Zoom, and was posted on the Town's website. Applicants were contacted directly with the change in meeting protocol, and provided with the opportunity to continue to a future meeting date.

The meeting was taped by Falmouth Cable TV, in accordance with long-standing practices.

All votes of the Board were taken by roll call.

Public Comment – none

#096-19 March, 94 Nantucket Avenue, Falmouth – special permit to renovate first floor and construct a second floor addition

Mr. Dugan noted there was a letter from the Applicant's representative requesting a continuation to April 30, 2020.

Dugan made a motion to continue to April 30, 2020. Morse seconded the motion. Motion carried 5-0. All in favor.

Roll call vote: Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye

Application #	Applicant Name:	Address:
96-19	March	94 Nantucket Ave Id
Document (s) Submitted	Date Submitted:	Submitted By:
Application / See	12/31/19	Holmes & McGraw
Narrative	12/31/19	Holmes & McGraw
(5) copies plot plan	12/31/19	Holmes & McGraw
(5) sets - Arch drawings	12/31/19	Holmes & McGraw
Request abutter list	12/31/19	(du)
Request referms	1/6/20	(du)
(5) copies revised site plans	1.7.20	(du)
Referml - Health	1.7.20	(du)
Authorization letter	1.8.20	(du)
Fire - referml	1.9.20	(du)
Planning - referml	1.9.20	(du)
Cert. abutter list	1.9.20	(du)
Referml - Water	1.14.20	(du)
Referml - Assessors	1.14.20	(du)
Eng referml	2.31.20	(du)
(incom) referml	2.3.20	(du)
Colored map	2.19.20	(du)
Letter from Structural Eng.	3.20.20	(du)
Waiver Extension	3.30.20	(du)
3 Exhibits (photos)	3.20.20	(du)

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Absent: Foreman**

#091-19 Cumberland Farms, Inc., 400 East Falmouth Highway and 8 Old Meeting House Road, East Falmouth – special permit to remove buildings on property and reconstruct service station and convenience store

Voting Members: Dugan, Van Keuren, Barry, Morse (Mr. Hurrie recused himself from the hearing.)

Acting Chair Dugan noted there was a request for a continuation to April 2, 2020.

Morse made a motion to continue #091-19 to April 2, 2020. Van Keuren seconded the motion. Motion carried 4-0. All in favor.

Roll Call Vote: Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye

Application #	Applicant Name:	Address:
091-19	Cumberland Farms Inc.	400 E. Fair / 801d mt. rt. 4
Document (s) Submitted	Date Submitted:	Submitted By:
Application/ fee	12/20/19	MTM
(5) Copies site plans	12/20/19	MTM
(5) sets Arch drawings	12/20/19	MTM
(5) Copies Threading	12/20/19	MTM
(5) Copies traffic Circulation Traffic Study	12/20/19	MTM
Storm management	12/20/19	MTM
Email to D Inger	12/23/19	(SW)
Permit - Planning	12/23/19	(SW)
Permit - Health	12/24/19	(SW)
Permit - Assessors	1/4/20	(SW)
Permit - Fire	1/4/20	(SW)
Cert. Abandoned list	1/6/20	(SW)
2) Streets Revised Site plans	1/4/20	(SW)
ConCom referral	1/21/20	(SW)
Engineering referral	1/23/20	(SW)
filed waiver	3/18/20	(SW)
PB Site Plan Review	3/30/20	WIS
PB Special Permit	3/30/20	WIS

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Zoom Remote Meeting
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Zoning Administrator: Noreen Stockman
Present: Hurrie, Dugan, Van Keuren, Barry, Morse
Absent: Foreman**

#005-20 Noonan, 183 Surf Drive, Falmouth – requesting a special permit to raze and reconstruct the dwelling; exceeding 20% lot coverage by structures

Voting Members: Hurrie, Dugan, Van Keuren, Barry, Morse

Dugan read the “Notice of Public Hearing” into the record and read the following referrals:

Engineering – standard comments; defer to Conservation for erosion and mitigation control, no access from Surf Drive, address must be changed to Seagull Lane

Assessors – no comment

Water – no comment

Planning – no comment

Fire – no comment

Health – Town sewer, refer to Wastewater Department

Dugan noted a letter was submitted from Attorney Kirk on behalf of an abutter in opposition.

Kevin Klauer, Attorney for Applicants – The Applicants are looking to raze and reconstruct the dwelling. The property is in a residential C zoned district, and within a Velocity zone. The Applicants have owned this property since 1994. This renovation will trigger FEMA regulations, and the proposal will have to come into compliance. All mechanicals will be 2’ above the flood zone, and the dwelling will be 12’ above grade. The current dwelling is 1,277s/f on a 7,603s/f lot; it’s non-conforming to the 3’ contour line at 9’ where 50’ is required. The front yard setback will become conforming at 26’, and the lot coverage will increase to 23.2%. The non-conforming setback to the contour line will remain unchanged. This renovation will be a substantial improvement to the property and the neighborhood. The increase of lot coverage requires a special permit, but no new non-conformity will be created. The project will meet the criteria of 240-216. The views and vistas from a public roadway will not be impacted. We submitted a lot coverage comparison worksheet, of the 26 surrounding homes all are either in an AE or VE flood zone. Six of the homes have been brought into compliance with flood zone regulations, and 2,543s/f is the average footprint of the homes. We want to have homeowners be able to bring their properties into compliance with FEMA regulations.

Michael McGrath – project Engineer – This project had Conservation review, and an Order of Conditions was issued for the raze and rebuild. There is a lot of area that will be mitigation plantings. A leaching trench will be installed for roof runoff.

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Board Questions:

Morse – What is the proposed height?

Klauer – 34'10" to the ridge.

Morse – Have you reviewed the letter submitted by Attorney Kirk in opposition?

Klauer – I've reviewed it, but I disagree with his opinions.

Dugan – You said they left the 1st floor open, doesn't it have to be closed in?

Klauer – There are certain building materials that are allowed that you can use for the exterior.

Dugan – In regard to staking at the site, is it possible to get the area staked where the overhang will be? It was a bit confusing.

McGrath - I know we staked it for Con Com. I can redo it, but I can assure you that it will be in the same location that it is on the plan.

Dugan – I would like it staked. Why did you pick the properties that you did for the lot coverage comparison? It seemed liked you picked all the ones with the larger homes.

McGrath – I believe I did all the abutting properties.

Klauer – We submitted a revised worksheet and included all 26 houses.

Dugan – How do you access the driveway? I had a hard time turning around and backing out, without turning into #185.

McGrath – There will be more space to maneuver on the proposed plan.

Barry – In the file there were 6 properties, but you only used 4 of them.

McGrath – I calculated the bulk coverage for all 6 properties.

Barry – When you went into detail you only used 4, not all 6, I'm wondering why?

McGrath – They are the ones with the smaller bulk.

Klauer – The average bulk included all 6 properties. It does address all 26 properties, including the 6 homes that have come into compliance with flood zone regulations.

Hurrie – I received Attorney Kirk's letter, but haven't had a chance to review it.

Dugan – Could you comment on what he [Attorney Kirk] was referring to about moving a non-conformity from one side to another?

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Klauer – We are maintaining a 9’ setback from the 3’ contour line, and the increase in lot coverage is by special permit, it’s not a non-conformity.

Dugan – Can you submit a copy of the Order of Conditions from Con Com?

Klauer – We can get that to you.

Dugan – I’d like to see the elevations of the surrounding properties.

Public Comment –

John Mullen, 123 Bywater Court, Falmouth (via chat)– I think this project will look great within the neighborhood, and will comply with FEMA regulations.

Frank Stepien (via chat), 185 Surf Drive – No issues with the proposal.

Dugan made a motion to continue application #005-20 to April 30, 2020. Van Keuren seconded the motion. Motion carried 5-0. All in favor.

Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye

Application #	Applicant Name:	Address:
005-20	NOONAN	1835 rt 1100
Document (s) Submitted	Date Submitted:	Submitted By:
Application / fee	1/29/20	HCM
(5) copies & 4 prop plot plans	1/29/20	HCM
pictures of Ex. property	1/29/20	HCM
lot coverage rules	1/29/20	HCM
prop. Architectural plans	1/29/20	HCM
Request a utilities list	1/29/20	(initials)
Request to demolish	1/29/20	(initials)
Health referral	1/30/20	(initials)
Fire Referral	2/3/20	(initials)
Building referral	1/30/20	(initials)
Referral planning	2.5.20	(initials)
Referral water	2.5.20	(initials)
Referral - Assessors	2.7.20	(initials)
Cert. A utilities list	2.7.20	(initials)
Revised plans	2.13.20	(initials)
Eng. Referral	2.21.20	(initials)
(5) letters of support	3.3.20	(initials)
- Foster	}	(initials)
Mcinnis		(initials)
Skpein		(initials)
Mullen		(initials)
Robe A		(initials)
letter of support	3.6.20	(initials)
(3) colored plans	3.18.20	(initials)
(updated) lot comparison sketch	3-19-20	WS

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Absent: Foreman**

#006-20 Schubert, Trustees, 23 Ormond Drive, East Falmouth – requesting a special permit to extend deck and construct front porch addition; increasing lot coverage by structures

Voting members: Hurrie, Dugan, Van Keuren, Barry, Morse

Dugan read the 'Notice of Public Hearing' into the record and read the following referrals:

ConCom – File Administrative review to amend plans

Engineering – standard comments

Water – no comment

Assessors – no comment

Planning – no comment

Pete Langan, representative for applicant – The current house is a single-story ranch about 1,300s/f located in Seacoast Shores. The house needs severe updating and upgrading. The applicant went through Conservation and was approved; in regards to the note they sent to us, we had previously sent them a revision, and had a reduction of 129s/f of mitigation planting. We aren't looking for anything outside of what ConCom has approved. The living space that will be increased is only 95s/f, and the back of the house will be squared off. The rest of the increase is all deck area. On the front elevation, there is a new porch addition/deck which is 112s/f. There is a concrete patio at the rear of the house that will be removed, so we can expand deck space. Most of the increase is for outdoor use.

Board Discussion –

Dugan – You mentioned there's a part being added for aesthetics, is that part of the deck?

Langan – On the site plan, there is 7'x18' area: that is the front porch, and a gable type roof above.

Dugan – Your proposed lot coverage is 24.9%, how much s/f would you need to take you over that 25%?

Langan – About 15s/f.

Dugan – You said it had views; what side is the view on, regarding the decks.

Langan – The south side.

Morse – Any objections in the file?

Dugan – I don't see anything.

Public comment - none

Morse made a motion to close the hearing. Van Keuren seconded the motion.

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Dugan – I haven't had time to review everything, now that we aren't able to access the office. I would feel more comfortable continuing. I have a concern with the lot coverage being so close to 25%. I think most of it is because of the deck issue and can be reduced somewhat where it's more of an aesthetics situation. It's not living space that is putting them over lot coverage, it's the decking. I'd like to see if they can reduce it, so they aren't that close.

Morse – I'll withdraw my motion.

Langan – In order to get this passed tonight, can there be a condition that I don't exceed 24.8% or 24.7%, so we can keep going with the project. We would be required to do an as-built.

Hurrie – When it comes to making a motion we require plans that reflect what is being proposed. We would need revised plans anyway.

Dugan – I would be looking for a lesser percentage.

Dugan made a motion to continue to April 30, 2020. Morse seconded the motion. Motion carried 5-0.

All in favor.

Roll Call: Morse, Aye, Dugan, Aye, Van Keuren, Aye, Barry, Aye, Hurrie, Aye

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#090-19 Reppucci, 24 Prospect Street, Falmouth – requesting a special permit to construct an addition to the 2nd floor of the dwelling, and allow office space on the 2nd floor of the detached garage with a new deck/stairway

Voting members: Hurrie, Van Keuren, Barry, Morse (Mr. Dugan recused himself from the hearing.)

Paul Reppucci, Applicant – There seemed to be a lot of concern over the garage at the last meeting. It's a two-family house, and was granted this status by a special permit that was issued in 1996. The inside is in great need of updating. There is no second egress to the 2nd floor unit; we are proposing a 15x16 addition above the single story. This will create a new living room, and a deck/stairway for that unit. There will be a bedroom relocated from the first floor to the second floor. The lot coverage will be made up by decreasing the deck and stairway to the detached garage. Every effort will be made to lessen the impact on the neighbors next door. There will be no changes to the septic, as there are no new bedrooms being created. The new addition will improve utilization to the property. We have decided to not do anything to the garage; this proposal will strictly be for the addition to the house.

Hurrie – At the last meeting the Board asked for a letter from a structural engineer, do you have that?

Reppucci – We have not done that because my architect and I investigated the foundation. It is in need of replacing, which we are now planning to do.

Hurrie – Do you have any plans showing the setbacks to the new foundation?

Reppucci – New plans are in the works.

Hurrie – Can you explain how the new foundation will be put in?

William Roslanksy, project Architect – The new foundation will go down 4', it will look identical to what is there now. There will be no change to appearance or volume of the house.

Hurrie – The setback that is shown now is 2.5' to the property line. Will that be the same?

Roslanksy – That won't change.

Barry – That was a concern of mine in the first meeting. Now that [garage] is being removed, is that an amendment to the application?

Reppucci – I had already submitted plans with my first application, and then revised them.

Barry – Wouldn't lot coverage calculations change?

Reppucci – There is no plumbing in the garage; it has all been removed, including the fixtures. We are taking the garage off the application. I don't know why there would still be a concern.

Barry – You mentioned that there was plumbing in the garage at the first meeting. That was a specific condition in the original appeal: that no plumbing would be installed / allowed.

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Reppucci – There is nothing up there; everything has been taken out. You can send someone out from the Board to verify.

Hurrie – The ZBA doesn't get into inspectional services; would you be amenable if we conditioned that there be no habitable space in the garage and possibly no bathroom of any type?

Stockman – Where there is now a proposed change to the main structure (a new foundation), the abutters would need notice of the change.

Hurrie – What assurances can be given to the neighbors regarding concerns over excavating?

Reppucci – We will be very careful to not disturb the neighbor's properties.

Roslansky – We would excavate from the side of the property, not from the neighbor's side. There will be no equipment on the neighbor's property, and we will backfill as soon as possible.

Morse – Your current setback is 2.5' from the lot line. How will you excavate to get in without disturbing the neighbor's property?

Roslansky – We would be removing parts of the structure, to get towards the earth. I would be leaning towards putting a block foundation in.

Hurrie – Will you be going over the existing septic?

Roslansky – We will have to navigate, and work around it.

Public Comment:

Margaret Van Amber (via chat), 55 Countinghouse Way – The applicant said he wasn't doing anything with the garage, but just said he's fixing the deck and stairs to the garage. Can the garage be attached?

Roslansky – We are just reducing the size of the deck, because it needs replacement. The footprint won't change, and the garage could never be attached, due to zoning and building regulations.

Barry – I looked back at the 1996 appeal because something like this was unusual in this zoning district. There were specific conditions made, including no home occupation. You had mentioned last time that your wife was an attorney, and there would be an office on the 2nd floor of the garage.

Reppucci – That's changed. The garage will only be used for storage; we won't be using it for anything else.

Barry – They also mention in the appeal that there shouldn't be any material changes made; it seemed they wanted more additional stipulations.

Reppucci – There is no second egress to that 2nd unit. The special permit said there should be no changes unless it's an egress, and that's what we are doing, making the property safe.

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Barry – When I reviewed your PowerPoint, it looked like there were already stairs there, to access that second unit.

Reppucci – If it's a two-story dwelling, you must have two forms of egress.

Roslansky – The house is required to have two forms of egress; both of these units should have 2, and they need to be separate.

Reppucci – The ruling of the '96 permit said the owners at the time should provide 2 forms of egress, and that was never done. This property is badly in need of repairs, and we have a plan to bring the building into compliance. The lot coverage will be decreased. It will be an improvement to the neighborhood. As I stated, we plan on moving here full time in a few years.

Board Discussion

Van Keuren – I think he had addressed the concerns we had.

Barry – I have concerns about the 2.5' setback, and the density of the structure being that close. Putting in a tight foundation, with a little amount of space. How close is the addition to the neighbors to the left? I'm looking at the standards of 240-216.

Morse – After the 1st hearing, a lot of my concerns were dealt with, since he eliminated the garage. I have concerns with not having a letter from a structural engineer.

Hurrie – I'm happy that the applicant has worked with us. The Board asked for a letter from a structural engineer, and that raises other questions as to whether or not the new foundation can be put in with a 2.5' setback.

Van Keuren – Maybe a detail of the foundation plan could put everyone's mind at ease.

Reppucci – If the back structure needs to be taken down to put the new foundation in, that's what we will do.

Morse – This seems to be a substantial change, I would think a new notice would have to go out to the abutters?

Stockman – I think the elimination of the garage from the application is fine, but when I think there is a change to the existing dwelling, such as a foundation replacement, I would agree with Mr. Morse that the neighbors haven't had sufficient notice. If you want these changes, we would have to continue far enough out to re-notice to the abutters.

Van Keuren – I think we need drawings for the foundation.

Barry – I voiced my opinions; I would be amenable to looking at new plans.

Morse – I agree with Mr. Van Keuren and have reservations like Ms. Barry.

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Hurrie – We would be looking to continue regarding the setback from foundation and notice to abutters.

Reppucci – If I go forward with this, how will I know how the Board feels?

Hurrie – The Board would be looking to condition that there be no habitable space above the garage, and no bathrooms. The change is the new foundation and the 2.5' setback. We don't want to see you creating a new nonconformity. The Board wants to see that the foundation can be placed without increasing the encroachment, and having to replace the septic.

Reppucci – If the plans show no issues with the septic, and we can stay within the 2.5' setback, will the Board go for it?

Morse – I won't commit to a yes or no; I have to see what the abutters say, and what the new plan looks like.

Barry – I agree with Mr. Morse.

Morse made a motion to continue application #090-19 to April 30, 2020. Van Keuren seconded the motion. Motion carried 5-0. All in favor.

Roll call vote: Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse –

Application #	Applicant Name:	Address:
190-19	Preppucci	244 Prospect St
Document (s) Submitted	Date Submitted:	Submitted By:
Application / fee	12/18/19	(SU)
(5) Copies - plot plan	12/18/19	(SU)
(5) sets architectural	12/18/19	(SU)
Request abutters list	12/18/19	(SU)
Request referrals	12/18/19	(SU)
Referral - Planning	12/19/19	(SU)
Referral - Health	12/20/19	(SU)
Email from owner	12/20/19	(SU)
Cert. Abutters list	12/24/19	(SU)
Referral - Assessors	12/24/19	(SU)
Referral - Fire	1/6/20	(SU)
Email from S. McGraw	1/7/20	(SU)
Amended application	1/9/20	(SU)
(5) Copies revised plans	1/9/20	(SU)
Referral - Health	1.10.20	(SU)
Referral - Planning	1.13.20	(SU)
Referral - Fire	1.15.20	(SU)
Referral - Assessors	1.14.20	(SU)
Eng referral	1.21.20	(SU)
Concom referral	1.21.20	(SU)
Water Dept. referral	1.21.20	(SU)
Eng referral	1.22.20	(SU)
Ref'd abutters list	2.13.20	(SU)
Letter oppos Brian Van Armburgh	3-19-20	WS

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Present: Hurrie, Dugan, Van Keuren, Barry, Morse
Absent: Foreman**

Open Meeting:

- 1) Approve minutes of February 20, 2020 and March 5, 2020
Dugan made a motion to approve minutes of February 20, 2020. Van Keuren seconded the motion. Motion carried 5-0. All in favor.
Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye
March 5, 2020 minutes – tabled
- 2) Request for insubstantial change RE #015-20 Habitat for Humanity of Cape Cod, Inc., Willette Way, East Falmouth – minor modifications to previously approved plans
Stockman – This was a 40B Comprehensive Permit, and during the hearing process there was a suggestion that each home have parking spaces for 5-6 cars. This created a parking court the same size as the footprint of the houses. They would prefer to reduce the parking space to provide for 2-3 vehicles. They are requesting this be an insubstantial change.
Hurrie - I do remember this. I don't think that it's a substantial change. I think something may have got lost in translation. That seems like an awful lot of parking.
Dugan made a motion to grant the request for an insubstantial change. Van Keuren seconded the motion. Motion carried 5-0. All in favor.
Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye
- 3) Request for insubstantial change RE# 017-16/17-16M Megansett Crossing, LLC., 676, 688 & 702 Rt.28 North Falmouth – Minor modifications to previously approved plans
Stockman – On this plan the Board felt that that there should be one unit that should be removed. The Applicant amended their plans to reflect that change.
Dugan made a motion to grant the request for insubstantial change. Van Keuren seconded the motion. Motion carried 5-0. All in favor.
Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye
- 4) Board Discussion –
Morse – Should we give the Zoning Administrator authorization to sign decisions on the Board's behalf?
Dugan made a motion to allow the Zoning Administrator to sign decisions on the Boards behalf.
Barry seconded the motion. Motion carried 5-0. All in favor.
Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye
- 5) Board Updates –
Hurrie – I appeared in front of the Selectmen last Monday night. They were going to advertise for the position on this Board. The voting will be scheduled for the Selectmen's April 9th meeting.
- 6) Future Agenda Items –
Next meeting April 2, 2020 @ 6:30 p.m.

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Executive Session – to review and discuss pending litigation at Housing Appeals Committee, Meawad v. ZBA, at “O” & 213 North Falmouth Hwy., North Falmouth, MA

Dugan made a motion to enter the executive session. Barry seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie -Aye, Dugan -Aye, Van Keuren-Aye, Barry-Aye, Morse – Aye

Dugan made a motion to come out of Executive Session and reconvene into Open Meeting. Van Keuren seconded the motion. Motion carried 5-0. All in favor.

Roll Call Vote: Roll Call: Morse, Aye, Dugan, Aye, Van Keuren, Aye, Barry, Aye, Hurrie, Aye

Meeting Adjourned 10:00 PM.

Respectfully submitted,

Ashley DeMello

Office Assistant

Zoning Board of Appeals