Falmouth Planning Board
Selectmen’s Meeting Room – April 16, 2019
Regular Meeting - 6:30 pm
MINUTES

Present: Jim Fox, Chairman, Pat Kerfoot, Vice Chairman, Paul Dreyer, Clerk/Secretary, John Druley, Robert Leary, Pamela Harting-Barrat
Also Present: Tom Bott, Town Planner, Corey Pacheco, Assistant Town Planner
Absent: Charlotte Harris

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

MINUTES: March 12, 2019, March 26, 2019, and April 8, 2019
MOTION by P.Dreyer/P.Kerfoot to approve the minutes of March 12, 2019, March 26, 2019, and April 8, 2019 as corrected.
Voted 6-0-0

PUBLIC COMMENT
None.

MOTION by P.Kerfoot/R.Leary to take Heufelder out of order.
Voted 6-0-0

Heufelder (78 Oakwood Ave) – Revisions to accessory apartment
George Heufelder - The site plan you have in front of you shows a slight modification so that we can add a mudroom where the covered landing was previously. The numbers still fit the formula. The same number of bedrooms and we are not in a sensitive area.

MOTION R.Leary/P.Kerfoot to allow the staff to administratively approve this.
Voted 6-0-0

MOTION by P.Kerfoot/R.Leary to return to the regular agenda.
Voted 6-0-0

PLANNING BOARD DECISION:

Applicant: William Rogers – Site Plan Review application for an accessory apartment located at 406 Woods Hole Road

MOTION by R.Leary/P.Kerfoot that the Planning Board vote to approve the application of William Rogers, under Article XXXIX (39) Site Plan Review of the zoning bylaw for a plan entitled: “Plot Plan Prepared for #406 Woods Hole Road Falmouth, Massachusetts” prepared by Stephen Doyle and Associates, dated January 3, 2019, scale 1” = 20’ (1 sheet), along with architectural plans drawn by ES design (6 sheets), dated February 6, 2019 revised March 25, 2019 with the following findings and conditions:

FINDINGS:
The applicant is seeking to construct an accessory apartment within the first floor of the single family residence with associated drainage, landscaping, and parking. The subject parcel is located in an
Residential B (RB) zoning district located at 406 Woods Hole Road, Map# 50 04 000 005. The lot size is 16,601 sf; the residence contains four bedrooms. The applicant is proposing to remove two bedrooms and have one bedroom in the apartment and one bedroom in the residence. Since there is a net loss in bedrooms there will be no requirement for a septic system upgrade. The proposed apartment will be 333 square feet; the primary residence is 1,586 square feet which will result in a 21 per cent relationship between the principle residence floor area and the proposed accessory apartment.

The Planning Board’s review does not include Building Code review and the Board defers to the Building Commissioner as to issues related to Building Code. The Planning Board would like to thank the applicant for revising plans and elevations based upon Board review and comment.

Findings pursuant to section 240-23.I of the zoning bylaw

a) Only one accessory apartment shall be allowed per lot and the *above referenced application and plans comply with this requirement.*

b) Either the principal dwelling or accessory apartment must be owner-occupied for a period of seven months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing. *The Board will condition its decision accordingly.*

c) Either the principal dwelling or accessory apartment may be rented, but not both during the five months the owner occupant may be absent. Rental periods shall be no less than six months and weekly/monthly rentals (summer rentals so called) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time. *The Board will condition its decision accordingly.*

d) The accessory apartment shall have no more than two bedrooms and a maximum of 800 square feet of floor area, or 40% of the floor area of the principal dwelling, whichever is less. *The above referenced plans comply with this requirement.*

e) The total number of bedrooms on the lot shall not exceed four when the lot contains less than 20,000 square feet. *The lot contains 16,601 square feet of upland, therefore, this requirement is non-applicable.*

f) Whether allowed as a matter of right or by special permit, accessory apartments located on lots subject to the provisions of the Water Resource Protection or Coastal Pond Overlay Districts the total number of bedrooms shall not exceed one per 10,000 square feet of lot area, unless both the principal dwelling and accessory apartment are connected to the municipal sewer system or to an on-site septic system with enhanced nitrogen removal approved by the Board of Health. *The property is not located in the Water Resource Protection District or the Coastal Pond Overlay District therefore, this requirement is non-applicable.*

g) (4) Design standards. Accessory apartments, whether a part of new construction, reconstruction, alteration or change to a single-family residence or accessory structure (attached) thereto, shall maintain the following standards:

   (a) The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling, shall be that of a single-family residence compatible with the surrounding neighborhood. *The Board finds the proposed accessory apartment meets the applicable design standards for a single-family residence.*

   (b) Parking for the accessory apartment shall be provided in a manner that is compatible with the surrounding neighborhood. *The proposed parking is sufficient for the site and is compatible with the surrounding neighborhood.*

CONDITIONS:

1. The plan shall be constructed as approved. Any changes shall be reviewed by the Planning Board to determine if a modification of this decision is necessary. Pursuant to §240-183.B of the zoning bylaw, no permit for full or partial occupancy shall be issued until the Planning Board is satisfied that the conditions of this approval and predecessor approvals have been met.
2. Either the principal dwelling or accessory apartment must be owner-occupied for a period of seven months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing. An affidavit shall be submitted annually to the building commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period of seven months and not otherwise rented as set forth above.

3. Either the principal dwelling or accessory apartment may be rented, but not both during the five months the owner occupant may be absent. Rental periods shall be no less than six (6) months and weekly/monthly rentals (summer rentals so called) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time.

Voted 6-0-0

PLANNING BOARD DISCUSSION:

Applicant: Woods Hole Partners, LLC – Site Plan Review to construct a forty-three (43) unit residential complex at the property located at 533 Woods Hole Road, to consist of thirty-nine (39) market rate swelling units in five (5) buildings (three duplex buildings, on twenty (20) unit building, and one thirteen (13) unit building), and four (4) affordable rental units in two duplex buildings.

Jim Fox recused himself.

T.Bott discussed discrepancies in site distances.

P.Dreyer - The applicant said he would consider a sidewalk down to the Library. I have not heard any commitment from the applicant.

T.Bott - They would be concerned about the cost of the additional sidewalk.

P.Dreyer - The problem with the sight distance is that the highway in this area is curved with a steep grade and people tend speed there to get to the ferry. We may want to consider having the state reduce the speed limit in this area which will also reduce the necessary sight distance to acceptable limits.

T.Bott - A rapid flashing beacon with signage may be some of that mitigation.

J.Druley - I would like to get a summary in writing of what we have left to do here with this project and I want to read all of the engineer's statements.

P.Kerfoot - If you take away four feet in the dome area, how is the parking accommodated?

Attorney Bob Ament - The changes to the curb cut widened the driveway. Those four feet are not taken out of the parking spaces. Those are eighteen feet. There is no assurances of safe stopping distance. The safe stopping distance has always been calculated at 250 feet. The 617 distance that is now shown is the actual observed distance. These measurements are listed in a supplemental report in your file. We rotated building B so that it is not as close to Woods Hole Road. It is a 135-degree view shed.

P.Kerfoot - To widen the sidewalk, you will have to cut into the hillside.

T.Bott - There was no discussion about excavating.

P.Dreyer - The applicant has made very good effort on issues raised by the Board. I think the sidewalk would be a benefit to an age-restricted community. The granite curbs are already installed so the actual costs of the sidewalk would be reduced considerably.

B.Ament - There are quite a few driveways and you would need to put in new curbing.

P.Harting-Barrat - Any new construction should be made handicap accessible.
R. Leary - That is more for the Town and State do get involved in. I can’t see laying that burden of the extended sidewalk on this applicant.

J. Druley - I think this project will be applauded if it gets approved. I like a lot of things that we see here.

P. Kerfoot - We will need an extension to the end of May.

Mark - I really need some help to move this along. I would like to see some headway made next week.

**CVS (105 Davis Straits) – Revisions to site plan/plantings**

Jon Coffman - The hedge is not screening headlights the way that we would like. We would like to replace the hedge with different plantings.

Ben Curtis, Maffei Landscape - We want to replace the hedge with a combination of perennial grasses. We would also like to use the Yews Hedge that is hearty and low maintenance.

P. Kerfoot - I have a problem with the grasses because they are cut down in the winter.

B. Curtis - We could actually do groupings where you would see the headlights.

P. Dreyer - What is the extent of the replanting and does it include the bank area?

B. Curtis - The intent is to include the section from the entrance on Rt, 28 around to the other entrance.

J. Fox - I was amazed the privet hedge didn’t work.

The Board agreed that staff will deal with the plant spacings and distances as an administrative matter.

**Messer (190 Goeletta Drive) – Revisions to parking for accessory apartment**

R. Leary recused himself.

Thomas Messer - We would like to request moving the driveway as shown as it will provide safer access.

P. Dreyer - This is becoming two houses on one lot and not an accessory apartment that was originally proposed. I think we need a proper hearing as there are significant changes being proposed.

P. Kerfoot - We discussed one driveway. I think there is sufficient space and difference between the buildings. I don’t like it. I think it has to come back to us.

J. Druley - It looks to me like there are one maybe two steps to go in.

P. Harting-Barrat - This looks like two different homes. This is what we didn’t want to see. I would like this to come back with the changes.

Messer - The proposed change would be coming off the existing driveway. It would still be one driveway. You would pull into the basement door.

MOTION by P. Harting-Barrat/P. Kerfoot to have the petitioner return for a public hearing.

T. Messer - We will withdraw the request.

**JML Care Center (184 Ter Heun Drive) – Revisions to site plan**

Attorney Bob Ament - No changes are proposed except with regard to the entrance. JML decided to reduce the size of the addition. We want to change that parking circle to four more parking places. Two of them handicap accessible. There is a little bit of change to the canopy.

P. Dreyer - I am happy to see the ambulance entrance will be covered as I have had experience of being in the rain and cold while trying to get to the facility.
Board Members agreed this can be approved administratively.

**Dates for joint meeting with Board of Selectmen**
July 29th, August 26th, September 16th, and October 21st
T.Bott - I would prefer not to meet on July 29th. We would be hosting and setting the agenda.
P.Kerfoot - I think September is better.

**Letter of support to Mass DOT for Woods Hole jitney stop near the Dome**
T.Bott - We will be writing a letter of support.

**Recap of 2019 Spring Town Meeting**
J.Fox - It started off moving very fast but then went downhill.
P.Kerfoot - When we propose indefinite postponement. I suggest that the moderator allows the reasoning behind it.
J.Fox - I thought having our meeting planned for every night worked very well. We will schedule them. We need to hear from Mr. Duffy if the Planning Board can put reasonable regulations on solar.
P.Dreyer – I am curious whether the perceived regulations on sober houses would be similar to any regulations on needle exchange locations in Town.
J.Fox - We would like a letter from Mr. Duffy if we can regulate those services of needle exchanges. We would like to know how other cities and towns have dealt with it.

**GENERAL CORRESPONDENCE:** March 27, 2019 thru April 15, 2019
Letter regarding the Housing Production plan.

**FUTURE AGENDA ITEMS:**
R.Leary - Meet with the energy committee and discuss solar development and maybe adding an energy element to the LCP.
P.Dreyer - Committee Reports; and update on Davis Straits with the CCC.
J.Fox - Let’s keep the Committee Reports on the agenda; also, announcements.

**NEXT MEETING:** April 23, 2019
**MOTION** by R.Leary to adjourn at 8:32

Respectfully Submitted,
Paul Dreyer, Clerk/Secretary
Sheri Theroux, Recording Secretary
May 15, 2013

Mr. Eladio Gore, Building Commissioner
Town Hall
Falmouth, Massachusetts 02540

re: Mammoth Acquisition – Site Plan Review
Map 39, Section 15, Parcel 25, Lots 000A and 000C, and
Map 39, Section 15, Parcel 27, Lot 000

Dear Eladio,

At its meeting of May 14, 2013 the Planning Board voted to approve the application of Mammoth Acquisition Company, LLC under Article XXXIX (39) – Site Plan Review - of the Zoning Bylaw to raze the existing buildings and construct two new buildings, one for retail sales and pharmacy use (15,300 +/- square feet) and the other for banking use (3000 +/- square feet) located at 93-105 Davis Straits and 238 Worcester Court also shown on Assessor’s Map 39, Section 15, Parcel 25, Lots 000A and 000C, and Map 39, Section 15, Parcel 27, Lot 000 as depicted on plans entitled:


b. “Planting Plan – CVS and Cooperative Bank Davis Straits”, prepared by Horiuchi Solien Landscape Architects, dated 10/01/12 , revised 4/12/13, scale 1” = 20 ‘; as supported by a letter from Laura M. Moynihan, Esq., dated 4/12/13;

c. “CVS Pharmacy Exterior Elevations and Notes” prepared by BKA Architects, dated 8/7/12, revised 4/8/13, scale 1/8” = 1’;

d. “New Branch Bank Building - Cooperative Bank of Cape Cod”, prepared by Brown Lindquist, Fenuccio & Raber Architects, dated 10/4/12, scale as noted (Sheets A1.1 – A2.2).

FINDINGS

The applicant proposes to redevelop the property located at the corner of Davis Straits and Worcester Court from its current 20,499 square feet of single family residential, office and retail space into 15,300 square feet of retail/ pharmacy space together with a bank for a total of 18,300 square feet of new construction.
This redevelopment requires review by the Planning Board under Article XXXIX – Site Plan Review – of the zoning bylaw for design details concerning parking, landscaping, drainage, lighting, utilities, and other aspects of site design. The use of the property, as proposed, will also require the issuance from the Board of a special permit under section 240-51.A(11)(a) for new construction of retail sales over 7,000 square feet gross floor area (gfa). The Board will decide each application accordingly. This project does not implicate Cape Cod Commission jurisdiction based on the above square footage calculation, as acknowledged in a letter dated 8/2/2012 from Paul Niedzwiecki, Executive Director.

These applications were received by the Board on January 9, 2013. The Planning Board duly advertised and opened its public hearing on the applications on February 12, 2013 that was continued to March 5, March 12 and April 2, 2013. The hearing was closed but for written comments from the applicant on architecture and landscaping on April 2, 2013. Following the closing of the hearing, the Board has reviewed the plans accompanying the applications and supporting material and has taken into consideration in its deliberations referrals from town departments, public testimony and correspondence from the Cape Cod Commission staff. The Planning Board conducted an on-site view of the property on February 8, 2013.

Under Site Plan Review the Board finds the plans conform to the dimensional requirements of the zoning bylaw concerning building setbacks and heights and lot coverage ratios. As existing buildings on the site are being demolished non-conformities, if any, have been extinguished.

The site is in the Coastal Pond Overlay District for Little Pond. However, the buildings will be utilizing the municipal sewer system; therefore there will be no need for nitrogen mitigation.

Except as modified by conditions #1 – 8 below, the Board finds the application satisfies Article XXII – Parking Requirements – of the zoning bylaw including the number and location of off-street parking and loading spaces, aisle widths, and the design of the drive-thru facilities; Article XXIII – Performance Requirements – of the Zoning Bylaw, including nuisances, site design and storm water management; and Article XXIV – Landscape Requirements.

CONDITIONS:

1. Tractor trailer trucks arriving at or departing the loading area at the south of the CVS building shall be limited to the hours of 10:00 pm to 1:00 am in order to avoid conflicts with motorists utilizing the drive up window.

2. All pavement markings and signs for traffic control shall be maintained in good condition.

3. All landscaping shall be maintained in good condition as per the plan cited above.

4. Pedestrian paths through the landscaped areas shall be provided with low-level lighting fixtures attached to bollard style fixtures. Pole lighting for the parking areas shall be designed as “down lighting” or “box” lighting, so called, so as not to spill over adjacent property lines.

5. Parking spaces 29 and 30 shall be designated “employee parking only” and parking space 31 shall be eliminated and the adjacent landscaped island extended in its place in order to avoid maneuvering or turning conflicts with vehicles entering the site from Davis Straits. Parking space 31 may be re-allocated elsewhere on the site under the supervision of the town planner.
6. The plan shall be constructed as approved. Any changes shall be reviewed by the Planning Board to determine if a modification of this decision is necessary. Pursuant to §240-183.B. of the Zoning Bylaw, no permit for full or partial occupancy shall be issued until the Planning Board is satisfied that the conditions of this approval have been met.

7. Prior to the issuance of a building permit, the applicant shall obtain a curb-opening permit from the Department of Public Works, Engineering Division for the entrance on Worcester Court. All work performed within the public right-of-way shall be conducted under the direction of the Town Engineer. Except as may be modified by the Massachusetts Department of Transportation for the curb cut on Davis Straits, the applicant shall seek the approval of the Department and all work shall be performed under the supervision of the Town Engineer.

8. Prior to the issuance of building permits, the applicant shall submit an Approval Not Required plan for the Planning Board’s endorsement to create Lots 1 and 2.

Sincerely,

[Signature]

Brian A. Currie
Town Planner

cc: applicant
From: Jonathan Coffman [mailto:jcoffman@coffmandg.com]
Sent: Tuesday, April 9, 2019 10:47 AM
To: Thomas Bott <thomas.bott@falmouthma.gov>
Cc: Debbie Villa <dvilla@coffmandg.com>
Subject: RE: Falmouth - 105 Davis Straits - Privet Hedge Replacement - Landscape Proposal

Tom,

As discussed on Friday, I’ve had our landscaper provide answers to the Planning Board’s questions (see below).

Let me know when you have a minute to discuss.

Thank you,

1) Why did the privet hedge fail?
   improper installation?
   lack of maintenance?
   too much salt from the parking lot?
   The privet failing is more along the lines of a design flaw than anything to do with the horticultural properties of
   the plant. The plants have continually since installation been backed into by vehicles in the parking lot and been
   disturbed by snow plowing in the winter. This constant attacked to the natural growing habit of the plant has
   contributed to them growing at odd angles away from the parking lot and looking unkempt even with regular
   maintenance. The proposed plantings will be better suited to contact from vehicles and allow push points for
   snow plowing in the winter.

2) Is the proposed shrub poisonous? Yes the Taxus berries are poisonous if ingested. Now to be perfectly
   honest with you, I have never run into a situation where this was brought up. Many commercial and
   residential properties in the North East use Taxus as a part of the landscape. CVS Falmouth actually has many
   of them which were included in the original planting plan. We replaced several of them last season.
   Is there a cost effective alternative that is low maintenance and will provide the desired screening (non-
   poisonous) such as Schipka cherry laure? Skip Laurel is a very nice ever green plant. There are several reasons I
   would not suggest them for the site. First they are an upright growing plant. This means they are weak at the top
   and if backed into would bend and potentially break. Also they are not as reliable / hardy as the grasses and
   Yews proposed. They require more strict sun shade tolerances. They are also prone to winter damage, including
   broken branches, wind burn and salt damage. This would result in a much higher rate of replacement each
   spring and or corrective pruning.

3) Would you say this plan meets what the Planning Board wants, which is it will be
effective for screening with relatively low maintenance? I do. The existing Privet plants are deciduous plants meaning they drop their leaves each fall. This creates a situation where through the winter there is effectively no screen. The Yews which I am proposing are evergreen and will continue to screen through the winter. Another thing to note about the existing privet is that it is one of the most maintenance heavy plants which you can have on your property. Privet once established should be cut 2-3 times a year in order to maintain shape and control growing habit. It also needs every 3-5 years, an extensive dormant prune to reduce height. The grasses proposed are the most low maintenance plant as they are perennials. Meaning they are simply cut back in the winter and regrow in the spring with minimal care. The Yews will simply need to be trimmed once a year during the regular summer pruning and need no additional special care.

Jonathan Coffman
617.480.6339

From: Thomas Bott <thomas.bott@falmouthma.gov>
Sent: Thursday, April 4, 2019 3:47 PM
To: Jonathan Coffman <jcoffman@coffmandg.com>
Cc: Debbie Villa <dvilla@coffmandg.com>; Falmouth Planning <planning@falmouthma.gov>
Subject: FW: Falmouth - 105 Davis Straits - Privet Hedge Replacement - Landscape Proposal

Dear Jonathan:
We have a two step process. You are scheduled to meet with Planning Board on 4/16/19 to determine if this would be considered a minor change. If not considered minor we would require a hearing and a plan set and O&M plan to make the change.
Screening for the site as you may know was a significant issue for the Board. The larger question may not be the plant materials but rather the sustainability of the screening given the perceived hardiness of privet hedges.
I’d be prepared to discuss why they failed: improper installation? lack of maintenance? too much salt from the parking lot?
Below are the comments that I received from our Tree Warden regarding the material submitted.
Thanks much,
TBott

From: Jeremiah Pearson
Sent: Thursday, March 14, 2019 4:35 PM
To: Thomas Bott <thomas.bott@falmouthma.gov>
Subject: Re: Falmouth - 105 Davis Straits - Privet Hedge Replacement - Landscape Proposal

Hi Tom,

The proposed plant material listed for screening would be very aesthetic. The only issue that there could be is that the yew shrub listed is poisonous if ingested. A good evergreen that could work is Schipka cherry laurel, great for screening and low maintenance.

Hope this helps,
Jeremiah

Sent from my iPhone

On Mar 14, 2019, at 12:10 PM, Thomas Bott <thomas.bott@falmouthma.gov> wrote:
Dear Jeremiah:
Thanks for taking a look at their proposal.
I spoke with only a couple members of Planning Board. They want a planting that will be effective for screening with relatively low maintenance.
Thanks,
TBott

From: Jonathan Coffman [mailto:jcoffman@coffmandg.com]
Sent: Tuesday, March 12, 2019 4:22 PM
To: Thomas Bott <thomas.bott@falmouthma.gov>
Cc: Debbie Villa <dvilla@coffmandg.com>
Subject: Falmouth - 105 Davis Straits - Privet Hedge Replacement - Landscape Proposal

Tom,

Great speaking with you briefly just now.

Attached is the proposal for work we would like to do in order to replace the failing privet hedge this Spring.

Please let me know when you have a chance to discuss.

Thank you,

Jonathan Coffman
Coffman Development Group
632 Washington St.
South Easton, MA 02375
(P) 508-588-0560
(M) 617-480-6339

www.coffmandg.com

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<Falmouth - 105 Davis Straits - Privet Hedge Replacement - Landscape Proposal.pdf>
Planning Board Review

To: Thomas Bott, Town Planner
CC: File

From: Scott Schluter, P.E., Staff Engineer
Date: 4/10/19

Re: 533 Woods Hole Road

The Engineering department received the following documents:

- Letter from Cape & Islands Engineering to Town of Falmouth Planning Board and dated March 25, 2019

- Revised Town Standard stormwater management calculations dated March 21, 2019

- Revised Stormwater Analysis dated March 21, 2019

- “Proposed Site Development Plans at 533-539 Woods Hole Road,” dated October 5, 2018, and last revised 3/29/19 by Cape & Islands Engineering

Following are our comments regarding the above documents and our previous review letters.

Commentary for all items under “Defer to Others” from our previous reviews are not included in the below review comments; we leave the decision on approval or require revisions to the appropriate parties. However, in the interests of record keeping, we’ve included summaries for these items.

All items under “Closed Comments” from our previous reviews are not included below.

Original comments are in *italics*, followed by new information in **bold** text. The subsection headings correlate with the previous review.

**Deferred Comment Summaries**

The following are summaries of our comments that fall under jurisdiction of others.

- The revised entry drive is 25 feet wide, the adjacent parking spaces are perpendicular 17 foot long gravel spaces. We defer to the Planning Board if what is shown on the plans is acceptable.

- Sight distance at both entrances do not meet Town Standards. Construction period truck travel on and off site a concern. Note that this is in MassDOT jurisdiction and an access permit will likely be required. We defer to MassDOT if the sight distance is acceptable, and if any additional safety requirements for the construction period should be provided.

- Sidewalks at both entrances have been extended down towards the existing sidewalk in Woods Hole Road. However, the west entrance sidewalk terminates at an area designated as a pull off.
previously stated, we would typically require that this curb cut be closed off if this were a town road, however, this area falls with the jurisdiction of MassDOT.
Should this pull off remain, we recommend that a sidewalk be constructed between the Woods Hole Road sidewalk and the terminus of the site’s sidewalk behind the pull off area to fully connect the pedestrian route. The current layout requires a pedestrian leaving or entering the proposed facility to navigate 40' to the west and 70' to the east through vehicle travel areas, and pedestrians travelling along Woods Hole Road to navigate 100' across this curb cut.
While the opening is existing, we recommend improvements meet standards as close as possible and improve safety when possible. If the opening remains, and connecting the sidewalks is not required, we recommend painted crosswalks connecting the sidewalk termini, but again, this is outside our jurisdiction.
We defer to the Planning Board and MassDOT what should be done in this area.

- There is a discrepancy between Title 5 and the Stormwater Handbook setback distances between stormwater infiltration structures and septic system leaching areas. Title 5 regulations require 25', and the Stormwater Handbook general requirements suggest 50'. The plans meet Title 5 regulations, not Stormwater Handbook general requirements.
We defer to the Board of Health on separation distances since this project is not subject to Conservation Commission review.

- Leaching system LS8 overflows stormwater towards Woods Hole Road in the 25 year, 24 hour design storm; §240-112 Stormwater Management B. Design Requirements (3) requires all stormwater to be mitigated onsite. As we stated, the Town standard calculations show compliance, the HydroCAD model does not.
We defer to the Planning Board if the proposed project meets this regulation.

Addressed Comments

The following are comments that have been addressed with these revisions.

- In HydroCAD B1 and B2 are routed to Pond 1 which is routed to Pond 2. Only LS6 is shown connected to the detention basin on the plans, and LS6 and LS7 are not connected to each other, the model and plans do not match.
  No change in the plans. The calculations were revised to use the Type III storm as required. The revisions result in a reduction of peak flow from 1.13 cfs to 0.70 cfs for the 100 year storm. The Applicant’s Engineer discussed extending the erosion control blanket to Catchbasin CB14 to reinforce the slope where this outflow would go but that doesn't appear on the plans. Also, there is a curb behind this structure that would interfere with flow to the basin.
A “stone splash” was added to the drawings for the 0.71 cubic feet per second peak 100 year storm outflow.

- There is a concrete bound with drill hole west of Building A that should either be protected during construction or reset after construction.
  The Applicant's Engineer indicates that the bounds will be protected and replaced if damaged. We recommend a note be added to the plans that the Zoning Board of Appeals and Planning Board approves, or a statement regarding this be added to the conditions of approval.
A note was added to E101 regarding protecting and resetting the bound if disturbed.

- §240 108.1 requires 24 foot aisle widths in parking lots with two way travel.
  o The parking area in front of buildings F and G is 20 feet wide.
The Applicant's Engineer indicates that the aisle will be widened to the Town Standard 24 foot. Since this is not shown on the site plans currently before the Planning Board for approval, we recommend that either revised plans are submitted showing this or the Board apply a condition to their approval stating that this drive aisle will be 24 feet wide.

The drive aisle in front of these buildings was revised to 24 feet wide.

- **The leaching pits and drywells detail indicates solid rims will be used on the risers, however some of the calculations use 1.5' square horizontal grates as outlets.** Based on the revised calculations only DW1b requires a catchbasin grate for overflow in both the 25 and 100 year storms. The model no longer uses 1.5x1.5 grate as an outlet, however it uses 2'x2' grates with two sets of 64, what is this intended to model? Based on the model, it appears that the rim of this grate will be set at elevation 64 and the ground around the location for this structure on the plan is around 63. We are assuming that this rim is elevated to prevent overland flow into this structure since no additional area in accounted for in the model. We recommend that revised plans are provided to the Planning Board for approval showing these changes or a condition be included in the approval stating that this drywell is to be fitted with a catchbasin frame and grate set elevated at 64 and the grades around it shall be elevation 63 or lower.

No drywells overflow in the revised calculations.

- **Some of the drywells utilize storage within the risers to hold stormwater volume. Any structures that rely on riser volume must include elevations on the plan to ensure tall enough risers are installed.** For example, the drywells for drainage area A1 models 4' high risers at elevation 59 and the 25 year storm peak elevation is 61.5. These drywells have to be installed deep enough to allow for a 30" minimum riser in order to work as modeled; if they aren't installed deep enough for at least a 30" riser, the stormwater volume modeled will not be contained in the structure. While these plans are not construction documents, this is information that could easily be missed because the only place it shows up is in the calculations. The alternative is to size the infiltration structures to fully contain the design storm which would allow flexibility in the elevation installed.

  The Applicant’s Engineer has included “Addendum for Drainage Leaching System Details Leaching Pits and Roof Runoff Drywells.” On this sheet a note is included requiring a 30" minimum riser height for leaching pits. Based on the calculations, DW1b requires a 5' riser, and LS3 requires a 6' riser.

  We recommend that revised plans are provided to the Planning Board for approval showing the structures requiring risers greater than the 30" standard.

Riser volumes are no longer required in the revised calculations.

- **The pipes from DMH1 to LS3, from LS1 to DMH, from LS2 to DMH1, and from LS4 to LS5 on the plans appears to be different from what the model uses.** Since there is no flow for either of the storms in any of these pipes, there is no impact on the calculations. If there are future revisions where flow is present, the model and the plans should be revised to match. Nothing to address at this time.

Three of these pipes were eliminated with the revised design. All overflow pipes have sizes and slopes indicated on the plans that match the calculations.

- **Why is the 25 year storm elevation higher than the 100 year storm elevation in DW1b?**

  The calculations were revised and this is no longer the case.

- **The model uses interconnected ponds to represent what is shown on the plans. Most of the pipes have no flow based on the elevations provided in the model. However, something is off. The 25 year storm elevation in LS3 is higher than the invert out of DMH1, and the 100 year storm elevation is higher than the invert out of both LS1 and LS2 and higher than the rim of DMH1 and the catchbasin rims that discharge to these structures.**

  The calculations were revised and this is no longer the case.
• LS3 has been revised to 2 leaching pits in stone envelopes based on the calculations and the drainage area map.
  o The model indicates a 6' riser at elevation 55 which would put the rim at elevation 61. The grades around the structure are ~57 and the rims of the catchbasins that discharge to these structures are lower as well.
  o The "Leaching Systems Elevation Schedule" table on "Addendum for Drainage Leaching System Details Leaching Pits and Roof Runoff Drywells" indicates an invert elevation of 56.9 which matches the lowest catchbasin rim elevation, where is this in the model?
  o LS3 also uses 18"x18" horizontal catchbasin grate, where this structure discharges for the 100 year storm in the model, this should be modeled using the grate openings of a catchbasin grate.

The calculations were revised and this is no longer the case.

• DW1a and Dw2c (the pit between buildings ‘C’ and ‘D’) appear to be deep, the pit tops appear to be ~9’ deep and ~14’ deep, respectively. This comment is informative only, nothing to address at this time.

The calculations were revised and this is no longer the case.

• The calculations show that 2 drywells are modeled for DW4d, however the plans only show 1.

The calculations were revised and this is no longer the case.

• The 100 year storm elevation in LS2 is 57.43 which is above the rim elevations of 56.7 of CB3 and CB4 just outside the garage under. This is also above the garage under slab elevation of 57.0.

The calculations were revised. The 100 year elevation for this system is reported at 55.74, while the catchbasins outside the garage have rim elevations of 55.7, the garage elevation is 56; the less than 1/2” flooding over the catchbasin grate elevation is insignificant.

• There are some inconsistencies in the "Leaching Systems Elevation Schedule" table on "Addendum for Drainage Leaching System Details Leaching Pits and Roof Runoff Drywells."
  o The stone and structure bottom elevations for DW1b appear to be switched.
  o DW4d shows an invert in elevation of 4.
  o LS1, LS2, LS4, and LS6 indicate "Overflow via pipe to x", shouldn’t these be “Analysis produces no overflow”?
  o LS8 has "N/A" for the invert out; the grate elevation is 48 in the model.

The table was revised, is now included on the Grading & Drainage Plan, and this is no longer the case.

• The revised model uses 3 design points, A, B, and C. The summaries for these nodes in the proposed indicates post development stormwater flows offsite. The Applicant’s Engineer has indicated they are reducing the stormwater impacts, however there is no comparison to the existing flows for the revised calculations. We recommend that an updated table be provided showing the pre versus post development summaries for these design points.

The revised calculations now include a summary table of the design points.

Open Comments

The following are comments from past reviews that remain open.
The model uses 64 2"x2" grates for the outlet on LS7 and LS8. What is this supposed to represent? The Applicant's Engineer included an image for a "typical" catch basin grate. The usual catch basin grates around Falmouth have 6 rows of 6 columns for 36 openings that are 2.5" square like shown below. Since the drainage model relies on outflow through these grates, we recommend that the drawings indicate the foundry catalog number for the specific catch basin grate (or equal), or the calculations be revised to model catch basin grates typical to this area.

LS5 uses 18"x18" horizontal catchbasin grate, where this structure discharges for both the 25 year and 100 year storms in the model, this should be modeled using the grate openings of a catchbasin grate. In the revised calculations, there is an outflow from this system in the 25 year and 100 year storms. As mentioned above, the catch basin grate model should be called out on the plans to match the calculations, or the calculations should be revised for catch basin grates typical to this area.

![Picture of a typical catchbasin grate in Falmouth.](image)

New Comments

The following are new comments based on the revised documents submitted.

- The PreDevelopment calculations utilize a Type II storm instead of a Type III storm as required in New England. This likely results in an over approximation in the peak flows which would mean a greater reduction than reported in the table.
  We recommend that the Applicant's Engineer provide a revised summary table and the two PreDevelopment calculation summaries (25 and 100 year storms) from HydroCAD.

- The PreDevelopment calculations use Time of Concentrations less than the standard 5 minute minimum.
  We recommend that the Applicant's Engineer provide a revised summary table and the two PreDevelopment calculation summaries (25 and 100 year storms) from HydroCAD.

- The revised Town Standard stormwater calculations show that all systems are sized to mitigate for the 25 year 1 hour design storm.
  Nothing to address.

- The delineation for drainage catchment A5 does not appear to be correct based on the grading near Building D. The majority of A5 would discharge to CB15 based on the grading, while the model routes it all to Woods Hole Road.
  The calculations should be adjusted to reflect the grading, or the grading in this area should be revised to reflect the stormwater model.
• Where does the 10 minute direct entry Time of Concentration for A5, B3a, and B3b come from? If it isn’t the minimum 5 minute Time of Concentration, it should be calculated by HydroCAD or backup calculations should be provided.

Provide backup information where 10 minutes came from, or use HydroCAD to calculate like was done for C2.

• The time of concentration calculation for C2 includes 100 feet of sheet flow. In New England, without backup information, 50 is the maximum sheet flow length utilized, and without backup, typically only 50 feet of sheet flow is used.

This time of concentration should be revised using 50 feet of sheet flow.

• The time of concentration calculation for C2 uses woodland surface for the shallow concentrated flow portion. The TR-55 Shallow Concentrated Flow procedure only uses paved and unpaved surfaces, the other choices in HydroCAD are for the Upland Method.

This time of concentration should be revised using paved or unpaved surface.

• The time of concentration calculation for C2 uses a 2 year storm depth of 3.4". The 2 year storm depth for Barnstable County is 3.6".

The time of concentration should be revised using 3.6" for the 2 year storm.

• There appears to be potential cover issues over some of the septic system components. 310 CMR 15.221 (7) requires a maximum cover of 36" for all system components, and 310 CMR 15.240 (9) requires a minimum of 9" backfill over leaching areas.

  o The lateral invert for System #1 is at 50.5, and there are grades at the eastern end close to 55.

  o The lateral invert for System #4 is at elevation 35 and there are grades at the southeastern corner shown as high as elevation 41.

  o There appears to be spot elevations of 34 and 35 over the leaching area for System #4 which puts the system laterals at and above grade.

  o The spot elevations over the leaching area for System #4 indicate less than 2% slope which is the minimum required by 310 CMR 15.240 (10). This grading, as shown also does not conform to 310 CMR 15.240 (11) which requires surface drainage to be directed away from the leaching area.

While the Title 5 system is subject to Board of Health review and approval, some of the above issues have grading implications that could impact stormwater management. Where grading does not impact stormwater we defer to the Board of Health. We recommend that the grading that does impact stormwater be revised, and that if any revisions are required by the Board of Health, impacts to stormwater management should be kept in mind.

• A “Stone Splash” is proposed near CB14. There doesn't appear to be a detail for this. Will the cape cod berm be depressed behind the catchbasin? What size is this?

We recommend that a detail for this area be added to the drawings.

• Some of the Town Standard calculations use 50 minutes leaching time, some use 60 minutes.
Using 50 minutes would result in conservative sizing of the systems. We do not recommend revising the calculations at this time but any future calculations should be consistent or explain why some areas are treated different than others.

- The two drainage pipes behind Building A add up to 330 linear feet based on the labels. The stormwater model uses 350 linear feet of pipe in the model. We do not recommend revisions at this time, however if new calculations are produced, this should be corrected to be consistent between the calculations and the plans since these pipes have flow in the 100 year storm.

- The sewer line is shown going through the stone bed of DW1a. The sewer line should be rerouted or the drywell moved.

- The HydroCAD models were run for the time span 0-24 hours. Typically models are run for the timespan 0-72 hours; the 100 year storm at a minimum should be run for this time span to evaluate if the stormwater holding facilities drain in 72 hours. We recommend that the Applicant's Engineer produce a summary for all holding facilities showing that they drain in 72 hours.

Thanks,

Scott Schluter
Staff Engineer
DPW Engineering Division
Town of Falmouth
March 20, 2019

Frank K. Duffy, Jr., Esquire, Town Counsel
Town of Falmouth
157 Locust Street
Falmouth, MA 02540

RE: Building Height in BR Zoning District

Dear Frank:

Presumably you’ve seen Rod Palmer’s opinion received March 8, 2019, stating that the maximum building height in the BR District is 35’ and the 2 ½ story limit does not apply, but in case you haven’t, attached is a copy.

In Tom Bott’s March 8 note to you asking for your interpretation of building height in the BR District, he gave you the language of 240-70, with all the exceptions referenced therein, but he did not cite Section 240-240.H.(5) nor provide the language thereof. Your March 11 reply to Tom also made no mention of Section 240-240.H.(5), nor any comment on why that section, part of the BR District section of Dimensional Regulations, would not control or why the language of Section 240-70 would be read into Section 240-240.H.(5). The phrasing of your March 11 reply strongly suggests that you were not aware of, and did not consider, Section 240-240.H.(5) when you replied. A copy of Section 240-240 is attached.

In the attached note from Kevin Klauser to Tom on March 12, he points out that Section 240-240.H. sets forth a comprehensive schedule of dimensional regulations that are specifically for, and unique to, the Business Development District. Building height of 35’ with no limit as to number of stories is not the only dimensional regulation that differs from what is set for in the Article XIV of the Zoning Bylaw, Sections 240-66 through 240-70 (“Dimensional Regulations”).

Those general Dimensional Regulations were adopted before there was a Business Redevelopment District. The BR District was established in 2004 for the purpose of encouraging particular economic activity/expansion, and Town Meeting gave BR its own dimensional regulations. Yes, Town Meeting could have amended the Article XIV sections at that time adding more exceptions, but instead consolidated all the BR dimensional regulations in Section 240-240.H. There are a number of places throughout the bylaw where the implementation of the Business Redevelopment district, and related exceptions or calculations, are not reflected within a previously existing section.
Rules of statutory construction apply. Section 240-240.H. was adopted most recently. The language itself is unambiguous, and that more recent language controls. As it specifically applies in the BR District, the more focused specific language takes precedence over the more general. And finally, if there were any ambiguity, which we do not think there is, in interpreting a zoning bylaw the less restrictive language should apply.

A particularly relevant case is Livoli v. Zoning Board of Appeals of Southborough. The Southborough bylaw’s schedule of dimensional regulations permitted accessory buildings on a lot in the Residence A district, and established a height limit of 35’ and 2 ½ stories for the principal building on the lot and a limit of one story (but no height limit stated) for an accessory structure. The Appeals Court held that while an accessory structure would be limited to one-story, there was no limit on the height of that story (which was 32’!). The Court stated “… the drafters might easily have inserted a height limit for accessory structures, as they did for principal structures, and they elected rather conspicuously not to, thereby igniting still another canon of construction, namely inclusio unius est exclusio alterius.”

This case is analogous and the precise inverse of the facts involving Woods Hole Partners’ proposal. The Falmouth Bylaw states a height limitation of 35’ and a restriction to 2 ½ stories in one section applied generally, absent an exception to the contrary. But the specific restrictions for the Business Redevelopment District state a height limit of 35’. The Planning Board or Town Meeting might easily have inserted a story limit within this section of the bylaw, but they elected not to. Town Meeting must be presumed to have been aware of what Section 240-240.H.(5) states explicitly, and must also be presumed to have knowingly established a height limit in the BR District distinct and different from the prior general provisions of Section 240-70.

We think the Building Commissioner, as the official charged with interpreting and enforcing the Bylaw, is correct in his interpretation, and we believe that the relevant case law supports this. We would appreciate your reviewing your reply of March 11, and this additional information, and seeing if you don’t agree.

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2 “The inclusion of one is the exclusion of another.”
4 Davenport v. Planning Board of Dennis, 76 Mass. App. Ct. 221 (2020), concerning the Dennis ZBA’s interpretation of a dimensional by-law as including provisions elsewhere in the zoning by-law, stating that the ZBA was “… not called upon to interpret inconsistent provisions of the by-law. Under the guise of ‘interpreting’ the by-law, they have added language that the drafters did not include. Where drafters of the by-law might easily have inserted a provision applicable to other provisions of the … use schedule but have rather conspicuously elected not to, we apply the rule of construction that ‘inclusio unius est exclusio alterius.’” (Id., at 227). See also Condon v. Hailman, 323 Mass. 371 (1950), “[W]here the language of a statute is plain there is no room for speculation as to its meaning or its implication. The Legislature must be presumed to have meant what the words plainly say, and it also must be presumed that the Legislature knew preexisting law.” Id. at 373.
I should tell you that we have examined the Planning Board’s recommendation to the 2004 Fall ATM, the record of the presentation to Town Meeting about the BR zoning article, and the minutes of Planning Board meetings in 2004 when the then proposed BR District bylaw was being discussed. We found nothing to suggest the language of 240-240.H.(5) should not apply as written; we found no mention of building height at all. All we know is that Town Meeting adopted dimensional regulations for the BR District that are different from general regulations applicable to other districts. We asked the Planning Board staff if there might be a file with drafts or memos or correspondence about this matter, and nothing was found.

Thanks for your consideration.

Very truly yours,

Bob

Robert H. Ament, Esquire

RHA/gmb
Enclosure

cc: Rod Palmer
    Tom Bott
    Corey Pacheco
    Pat Kerfoot, Acting Chair, Planning Board
    Noreen Stockman
    Terrence J. Hurrie, Chair, Zoning Board of Appeals
    Mark Bogosian
Robert H. Ament, Esquire  
Ament Klauer LLP  
39 Town Hall Square  
Falmouth, MA 02540  

Re: Maximum Building Height in the Business Redevelopment District  

Dear Mr. Ament:  

You have inquired about the building height allowed in Falmouth’s Building Redevelopment District.  

Regarding building height, we generally look to Zoning Bylaw Section 240-70, which states, “The basic maximum building height for principal structures is 2 1/2 stories, not to exceed 25 feet . . .” However, the Business Redevelopment Bylaw has its own set of Dimensional Requirements, Section 240-240.H., and subsection 240-240.H.(5) reads: “Maximum building height: thirty-five (35) feet.”  

The building height in the Business Redevelopment District is therefore not limited to 2 1/2 stories. The number of stories is not regulated in the Business Redevelopment District at all. The only applicable factor for determining allowable height in the Business Redevelopment District is the 35’ measurement. The height is to be measured as provided in the definition of “Building Height” in Section 240-113 of the Zoning Bylaw.  

Bylaw Section 240-240.H.(5) is clear and unambiguous. It is one of several dimensional regulations applicable in the Business Redevelopment District that differ from dimensional requirements set forth in Article XIV of the Zoning Bylaw. The Business Redevelopment District has its own set of dimensional requirements. I believe that these provisions, including Section 240-240.H.(5) are consistent with the purposes of the Business Redevelopment District as set forth in Section 240-240.A.  

Very truly yours,  

[Signature]  

Rod Palmer, C.B.O.  
Building Commissioner, Town of Falmouth
Dear Tom,

Thank you for getting back to me and forwarding Atty. Duffy’s email. However, I must respectfully disagree with the rationale.

You note in your email to Atty. Duffy that Section 240-70 lists a number of exceptions to the building height limitation and Business Redevelopment is not noted within that section. However, there is a history of the provisions of Section 240-240 not being appropriately reflected in other sections of the bylaw.

None of the dimensional requirements set forth in Sec. 240-240.H. are noted in the corresponding sections of the bylaw under Article XIV (the section governing Dimensional Regulations), and this includes provisions that are in direct contract to the otherwise stated dimensional requirements. The most applicable example of this would be the minimum front-yard setback. Sec. 240-68.A. states that “Minimum setbacks from the street frontage shall be 25 feet, with the following exceptions:” and includes exceptions for certain sections of Route 28, 28A, Route 151 and Thomas Landers Road. It goes on to list setback for multifamily dwellings, commercial accommodation and buildings within business 1 zoning. At no point within Sec. 240-68.A. does it list Business Redevelopment as an exception. Yet, Sec. 240-240.H.(6)(a) states a minimum setback from the front yard of only 20 feet. I do not believe anyone would argue that the provisions of Sec. 240-68.A. should control the setback for business redevelopment.

Given that Sec. 240-240 establishes its own dimensional requirements, and does not place a story limitation it seems clear that the number of stories is not regulated in the Business Redevelopment District at all. The only applicable factor for determining allowable height in the Business Redevelopment District is the 35’ measurement. Section 240-240.H.(5) is clear and unambiguous. It is one of several dimensional regulations applicable in the Business Redevelopment District that differ from dimensional requirements set forth in Article XIV of the Zoning Bylaw, without specific exemptions set forth in those corresponding sections.

I appreciate your time and attention to this matter.

Regards,

Kevin P. Klauer II, Esq.
Ament Klauer LLP
39 Town Hall Square
Falmouth, MA 02540
Telephone: (508) 540-6555
Fax: (508) 457-1293
Email: kevin@amentklauer.com

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From: Thomas Bott [mailto:thomas.bott@falmouthma.gov]
Sent: Tuesday, March 12, 2019 3:21 PM
Dear Kevin and Co:
Thank you for your email of 3:06 PM today 3/12/19. I had been waiting to hear back from the Building Commissioner prior to forwarding Town Counsel’s opinion.

From: Frank Duffy
Sent: Monday, March 11, 2019 11:24 AM
To: Thomas Bott <thomas.bott@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>
Cc: Noreen Stockman <noreen.stockman@falmouthma.gov>; Corey Pacheco <corey.pacheco@falmouthma.gov>; tjhurrie@gmail.com; Jim Fox <jimfox1111@gmail.com>; Ken Foreman <kforeman@mbl.edu>
Subject: RE: Building Height in Business Redevelopment District

I concur with the opinion of Planning Board staff. There is no exception from the 2 ½ story limit in BRD. The zoning bylaw provides for specific exemptions in other districts which means to me there is not one in BRD by implication or otherwise.

Frank K. Duffy, Town Counsel
Town of Falmouth For
157 Locust Street
Falmouth, MA 02540
(508) 548-8800 fax (508) 540-0881

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From: Thomas Bott
Sent: Friday, March 08, 2019 9:47 AM
To: Frank Duffy; Rod Palmer
Cc: Noreen Stockman; Corey Pacheco; tjhurrie@gmail.com; Jim Fox
Subject: Building Height in Business Redevelopment District

Dear Rod and Frank:

I am requesting an interpretation of building height in the Business Redevelopment zoning district. It is the considered opinion of the Planning and Zoning staff that maximum building height in the Business Redevelopment district is 2 1/2 stories not to exceed 35 feet with the top 1/2 story being 50% of the square footage of the floor below it. Attorneys for Woods Hole Partners have stated in staff meetings and at last night’s ZBA meeting that the height in the Business Redevelopment district is 35 feet and there is no stipulation to 2 1/2 floors. However the Falmouth Zoning Bylaw § 240-
70 Maximum building height states such with exceptions in Agricultural Districts for agricultural uses only, Public Use Districts for permitted community service uses, and in Light Industrial B and C Use Districts. There are no stated exemptions for the Business Redevelopment District

If you would please provide your written opinion to the Planning and Zoning staff we will forward it to attorneys Ament and Klauer for the Planning Board and the Zoning Board's benefit.

This item is on the Planning Board’s agenda for 3/12/19 and the ZBA's agenda for 4/18/19.

§ 240-70 Maximum building height.
The basic maximum building height for principal structures is 2 1/2 stories, not to exceed 35 feet, and for accessory, not to exceed 22 feet with the following exceptions:
A. For agricultural uses only, structures within Agricultural Districts may have a maximum height of 50 feet as measured from the base of the structure to the highest point.
B. In Public Use Districts, the maximum building height for permitted community service uses is three stories, not to exceed 50 feet, except that the municipal purposes found in § 240-30B shall not be subject to the height provisions of this bylaw.
C. In Light Industrial B and C Use Districts, the maximum building height shall be 40 feet, and the maximum number of stories shall be three.
[Added ATM 4-6-1992, Art. 17; amended AFTM11-7-2011, Art. 3, approved 1-31-2012]
D. By special permit from the Zoning Board of Appeals, on lots two acres or more, accessory structures may have a maximum height of 25 feet. In granting such special permit, the Zoning Board of Appeals shall require that the lot shall not be divided below the two-acre minimum, that no accessory apartment shall be allowed and that the suitability of the site is sufficient to allow such an increase in height so that there will not be any adverse impact on neighborhood visual character or obstructions of views and vistas.
[Added ATM 4-6-1992, Art. 18]

Thank you,
TBott

Thomas Bott
Town Planner
Falmouth, MASS
508-495-7440 o.

Please note new email address thomas.bott@falmouthma.gov
Chapter 240 Zoning

Article XLVI Business Redevelopment

[Added AFTM 11-8-2004, Art. 3, approved 12-30-2004]

§ 240-240 Business Redevelopment District.

A. Purpose. The purpose of this article is to promote the revitalization of commercial centers using mixed-use redevelopment integrating retail, office, restaurant and community service uses with housing, such as second floor apartments, condominiums and townhomes. This redevelopment fosters pedestrian-friendly streetscapes by requiring rear and side yard parking, allowing shared parking between businesses and uses, reducing and consolidating curb cuts, and allowing parking reductions in exchange for on-site green space. The district also relaxes front, side and rear yard setbacks to encourage sidewalk development and pedestrian-friendly storefronts to offer streetside gathering places in front of redeveloped properties, rather than front yard parking fields.

B. Permitted mixed uses (residential/commercial uses).

(1) Section 240-18.1 notwithstanding, any combination of permitted community service, business and commercial uses together with residential uses under six (6) units per acre with the following criteria:

(a) Commercial or community service uses must be present within at least the first story space within any mixed-use structure sited within one hundred (100) feet of the street frontage.


(b) Any new mixed use construction with a proposed gross floor area of ten thousand (10,000) square feet or more requires a special permit from the Planning Board. Therefore Subsection G(2)(a) will not apply to new commercial construction incorporating residential uses.

(c) Permitted residential uses:


C. (Reserved)

D. Permitted community service uses.

(1) Churches, schools, libraries, museums, educational, research and philanthropic institutions, cemeteries.

(2) All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, water towers, fire and police stations.

E. Permitted business and commercial uses.

(1) Retail sales not more specifically listed only if each establishment occupies no more than four thousand (4,000) square feet gross floor area.

(2) Business or professional offices, bank, medical clinic, computer center.

(3) Personal and household services only if each establishment occupies no more than four thousand (4,000) square feet gross floor area.

(4) Class I or Class II restaurants.

F. Permitted accessory uses. Such accessory uses are customarily incidental to any of the above uses except that the outdoor display and/or storage of goods and merchandise for sale is permitted beyond the front yard setback only when such display and/or storage is wholly incidental and secondary to a primary use conducted within the permanent structure on the lot. No such display and/or storage may occur in delineated parking spaces, traffic lanes, crosswalks, sidewalks and front yards.

G. Special permit uses:
Uses allowed on special permit from the Board of Appeals:
(a) Commercial accommodations. (See Article XXVII)

(b) Multifamily use greater than six (6) units per acre, up to eight (8) units/acre if the Board of Appeals finds: that the public good will be served; that the business zoned area would not be adversely affected; and that the uses permitted in the zone would not be noxious to a multifamily use.
[Amended STM 4-3-2012, Art. 4, approved 5-4-2012]

(c) The outdoor display and/or storage of goods and merchandise for sale other than as permitted under Subsection F. The issues raised in Subsection F shall be issues to be considered in addition to those specified in § 240-216.

(d) Any change, alteration, modification, or addition to an existing business or commercial shopping center that would result in a building with a gross floor area of ten thousand (10,000) square feet or more.
(e) Motor vehicle service stations.
(f) Nursing homes.
(g) Class III restaurant.

Uses allowed on special permit from the Planning Board:
(a) Any new construction of a business or commercial shopping center with a proposed gross floor area of seven thousand (7,000) square feet or more.
(b) Any new mixed use construction with a proposed gross floor area of ten thousand (10,000) square feet or more.

H. Dimensional requirements.
(1) Minimum lot size: twenty thousand (20,000) square feet.
(2) Minimum lot width: one hundred twenty-five (125) feet.
(3) Maximum lot coverage by structures, paving and parking: sixty percent (60%).
(4) Maximum lot coverage by structures: twenty percent (20%).
(5) Maximum building height: thirty-five (35) feet.
(6) Minimum setbacks:
   (a) Front yard: twenty (20) feet.
   (b) Side yard/rear yard: ten (10) feet.
(7) Minimum frontage: one hundred (100) feet.
[Amended ATM 4-11-2005, Art. 25, approved 5-9-2005]

I. Site plan requirements. One (1) curb cut shall be allowed by right per lot with Main Street frontage. One (1) curb cut shared between abutters is preferable. The Planning Board under site plan review may grant exceptions if two (2) curb cuts are absolutely necessary to access parking facilities or to reduce traffic impacts on a given site.

J. Parking requirements.
(1) Parking shall be provided as per Article XXII, Parking Requirements, of the Zoning Bylaw. All parking shall be located in side or rear yards behind the front facade line of the building, the exact location to be determined by the Planning Board under site plan review. However, the number of the required parking spaces may be altered by the Planning Board under site plan review for uses allowed as a matter of right, or by the special permit granting authority for uses allowed by special permit in the following manner:
   (a) Number of spaces: may be reduced for mixed use developments at the discretion of the Planning Board based on the number of uses that are complementary in days and hours of operation. Parking may also be reduced if pedestrian amenities both on-site and between properties and the street line are incorporated into the site planning. In no case
shall parking be reduced below fifty percent (50%) that is required pursuant to Article XXII unless by special permit; the Board of Appeals allows for such pursuant to § 240-107B.

(b) Location of spaces: Parking may be located off premises if shared parking between businesses or uses can be demonstrated via long-term agreements, leases, and licenses of five (5) years or more and to the satisfaction of the Planning Board or Board of Appeals as the case may be. Shared parking shall not be allowed that is more than three hundred (300) feet from the property line.

(c) Definitions.

**FRONT FACADE LINE**
A line even with the front facade of a building extending out to the side property lines delineating the front and side yards on a site for site design purposes.

§ 240-241 through § 240-249. (Reserved)
April 10, 2019

Terrence J. Hurrie, Chairman
Falmouth Zoning Board of Appeals
59 Town Hall Square
Falmouth, MA 02540

Re: Use of the Dome at 533 Woods Hole Road, Appeal No. 115-18

Dear Mr. Hurrie:

At the Board’s meeting on March 7, 2019, Mr. Dugan asked if the Applicant would provide a written statement about how the Dome may be used.

As everyone knows, the Dome is in a deteriorated condition and has been for many years. However, the applicant’s consultants have determined that the structure is not past the potential for preservation (unlike the site’s former motel buildings). The proper preservation of the Dome is likely going to cost more than $1,000,000.00, perhaps much more, not including the cost of the proposed entry building that would provide handicapped access and bathrooms. Stopping the decline, and seeing the Dome restored, would be among the substantial benefits resulting from the property being redeveloped as a feature of the housing that the applicant proposes.

When the Board of Appeals approved the Wise Living project in 2009 (Special Permit No. 98-08), the Dome was to be incorporated in the single large condominium building, as unspecified common space. Although the Dome remains an independent structure in the Woods Hole Partners design, not attached to any of the residences, it could be a common facility for use of the condominium residents. The space (the floor area of the Dome itself is about 2,300 s.f.) could be a residents’ club house, meeting space or exercise area.

In its Amendment to Covenant with the Woods Hole Community Association, the applicant agreed to explore having the Dome be redeveloped as part of a proposed arts center. However, an agreement could not be reached regarding the scale of the arts center and various other matters. The Covenant provides that the applicant will continue to explore with the Community Association potential redevelopment/use of the Dome by another nonprofit, “with provisions made for space therein to be available from time to time for historical tours and as a venue for meetings sponsored by the Association and other not-for-profit organizations . . . subject to reasonable regulation by [Applicant] and/or the association of condominium unit owners.” The applicant is open to other proposals, but is not presently aware of any organization that is willing and able to assume responsibility for the Dome on satisfactory terms compatible with the proposed residential development. The use of the Dome must not require a great
amount of parking and it must have design septic flow of less than 210 gallons per day\(^1\). The use must not generate much traffic. Activities cannot be noisy nor otherwise cause nuisance to residents of the age-restricted homes, nor to the abutting hotels and nearby houses.

The applicant has proposed use of the Dome as not-for-profit artists studios, which would meet the necessary criteria—low traffic volume, modest parking need, small septic flow, quiet. Local artists have told the applicant that there is a demand for art studio space, and the Dome could become inspirational space with beautiful surroundings and views and excellent natural and artificial lighting. The open domed space, some 25 feet high at its center, could have studio stations for perhaps eight or ten artists. The studio might be organized and managed by an arts nonprofit, an artists’ cooperative, or by the residents’ condominium association. The studio space, or some of it, might be used by residents, an attractive amenity to some prospective home owners. The Dome artists studios would not be a profit-making endeavor, however managed.

Whether the Dome becomes common space for residents’ use, is redeveloped as artists studios operated by the condominium association or an arts non-profit, or has another non-profit use, the Dome will be regularly open to the public for viewing and inspection. Public access might be generally available during studio hours, or tours might be scheduled by a local historical museum. If the space is used as artists studios, the public would have the opportunity to visit the Dome at least during occasional open houses.

Unless responsibility for preservation, maintenance and operation of the Dome is taken over by a not-for-profit organization, which the applicant does not now anticipate, it will be the obligation of Woods Hole Partners and the future association of condominium owners to rehabilitate and preserve the Dome as a condition of permits for the residential development. In the 2009 Special Permit, the Board of Appeals set a condition that “the continued care and maintenance of the Dome shall be the responsibility of the Development’s Association or its designee.” The applicant’s development costs would include all work to restore the Dome and construct the proposed entry building. A maintenance plan will be developed for on-going maintenance and operations, with dedicated funding (a Dome reserve account) initially established with allocations from the sale of each market rate unit. On-going funding will be secured by assessments to the condominium unit owners and shall be a lien on each unit pursuant to Chapter 183A of the General Laws, an effective and enforceable funding mechanism. The obligations of the condominium with respect to the Dome shall be set forth in the condominium Master Deed and Unit Owners Association Declaration of Trust, recorded instruments.

The exact use of the Dome and the extent of public access cannot be specified at this time. Full permitting of the applicant’s project, completing preservation designs and achieving a preservation restriction, and reconstructing/preserving the Dome, will take at least a couple of years. The use of the Dome could change over the years, but the following conditions might apply as conditions of project approval regardless of the use:

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\(^1\) The Dome and proposed entry building will contain about 2,750 s.f. Title 5 design flow for office use (and artist studios, presumably) would be 206 GPD (75 GPD/1,000 s.f.). For a theater or auditorium use, Title 5 specifies 3 GPD/seat.
The Dome shall be preserved according to plans approved by the Massachusetts Historical Commission and the Falmouth Historical Commission.

2. A permanent Preservation Restriction approved by the Massachusetts Historical Commission under Chapter 184 of Massachusetts General Laws shall be filed in Barnstable County Registry of Deeds prior to occupancy of any residential unit, and the preservation of the Dome within a reasonable period of time shall be assured by a covenant or bond satisfactory to the Board of Appeals. A reasonable period for achieving substantial restoration/preservation would be three (3) years from issuance of a building permit for any of the residential buildings.

3. The Dome shall be open for public viewing at least monthly.

4. The grounds around the Dome, and walking paths established throughout the site, shall be open to the public daily, subject to reasonable rules and regulations.

5. In the discretion of the applicant or the residents' condominium association, the Dome may be used as common space for the residents of the condominium association, for not-for-profit artists studios, for meetings of the Woods Hole Community Association and other non-profit organizations or for other community service uses permitted under Section 240-240.D.(1), in all cases subject to rules and regulations established from time to time by the applicant or the residents' condominium association, provided that
   a. the use shall have Title 5 design flow of less than 210 GPD;
   b. the eight parking spaces north of the Dome shall be available to persons visiting the site or using the Dome; if the Dome is used only for residents' common space, with only occasional public use, additional parking for the Dome shall not be required beyond such eight spaces, which need not be paved. If the Dome is used for artists studios, the eight parking spaces north of the Dome will be deemed sufficient, under Section 240-107.B., as some of the studio spaces will likely be used by residents and the different studio spaces will be occupied at varying times. For other uses, the sufficiency of parking may be determined administratively by the Zoning Administrator, or by the Board pursuant to Section 240-107.B.

6. Prior to recording, a copy of the proposed condominium documents (Master Deed and Declaration of Trust) shall be submitted to the Board of Appeals for review with respect to provisions related to preservation, maintenance and operation of the Dome, to assure consistency with the Board's conditions of approval. Such documents shall set forth the financial obligations related to the Dome that will attach to unit ownership. The condominium documents shall bar amendment of such provisions without approval of the Zoning Administrator or the Board of Appeals.

The Board may have ideas for other conditions or for modifications to this proposal, and we would like to discuss any of this with the Board. Obviously, these conditions would apply only if the proposed project is approved and is actually undertaken.
I hope the foregoing is sufficiently informative about the future of the Dome if the Board approves the applicant’s proposal and the redevelopment proceeds.

If there are questions or suggestions, please let me know.

Thanks for your consideration of these matters.

Very truly yours,

Bob Ament

Robert H. Ament

RHA/gmb

cc:  Tom Bott, Town Planner
     Mark Bogosian
April 8, 2019

LaFrance Hospitality Corporation

c/o Kevin P. Klauer, Esq.
Ament Klauer LLP
39 Town Hall Square
Falmouth, MA 02540

RE: LaFrance Hospitality 763 Main Street
Falmouth, MA
CCC Project Number: TR19009

Dear Attorney Klauer:

This letter serves as notice that the above-referenced project has been referred to the Cape Cod Commission (Commission) as a mandatory Development of Regional Impact (DRI) under Section 3 of Chapter A, Code of Cape Cod Commission Regulations, Enabling Regulations Governing Review of Developments of Regional Impact. The Commission received the referral from the Town of Falmouth through the Falmouth Planning Board Chair, Jim Fox, and the Falmouth Town Planner, Thomas Bott, on March 29, 2019. Enclosed is a copy of the referral form.

In accordance with the Cape Cod Commission Act, the Commission is required to open a public hearing within sixty (60) days of the receipt of a DRI referral, which date in this case is May 27, 2019. Pursuant to the Commission’s Enabling Regulations, upon receiving notice from the Commission of the proposed development’s referral as a DRI, the Applicant shall file an application for DRI review. No municipal development permits may be issued until the Commission completes its review and issues a DRI approval.

Kristen Clothier, Regulatory Officer at the Commission, is the project manager and your contact person. Please do not hesitate to contact Ms. Clothier should you have further questions.

Sincerely,

Gail Hanley
Commission Clerk

Enclosure
cc: Charles McCaffrey, CCC Falmouth Representative

By certified mail:

Thomas Bott, Falmouth Town Planner & DRI Liaison
Jim Fox, Chair Falmouth Planning Board
Chair Falmouth Zoning Board of Appeals
Chair Falmouth Conservation Commission

Michael Palmer, Falmouth Town Clerk
James Brandolini, Falmouth Building Commissioner
Falmouth Health Agent
Development of Regional Impact (DRI) Referral Form

Please attach a copy of the original municipal development permit application or site plan review, subdivision, or other application showing the date on which it was received by the Municipal Agency. Receipt of this information via the U.S. Mail or delivered in person to the Cape Cod Commission constitutes a referral for purposes of Chapter 716 of the Acts of 1989, as amended.

Referred by:

Town and Agency _Falmouth Planning Board__________

Official _Jim Fox, Chairman; Thomas Bott, Town Planner__________

_x___ Mandatory referral

___ Discretionary referral

___ Limited Discretionary Referral (please see the back of this form)

Project Name _LaFrance Hospitality 763 Main Street__________

Project Proponent Name _LaFrance Hospitality Corporation__________

Address _53 Old Bedford Road__________

__Westford, MA 02790__________

Telephone _508-676-7888__________

Brief description of the project including, where applicable, gross floor area, lots, units, acres and specific uses:

79 room hotel and 36 seat restaurant on corner of Main Street and Scranton Avenue (#24), 64,379 gross sq ft, one 2.5 story building, underground and surface parking. In Business Redevelopment and B2 Zoning Districts.

Project location:

763 Main Street and 24 Scranton Avenue

Map Nos.47B 09 013 022; 47B 09 010 002

List municipal agency(ies) before which a municipal development permit is pending:

_Falmouth Planning Board

_Zoning Board of Appeals

_Signed by Referring Representative_ Jim Fox

_Signed by Official_ Jim Fox

_Signed by Date_ 3/26/19
April 4, 2019

Frank K. Duffy, Jr., Esquire, Town Counsel
Town of Falmouth
157 Locust Street
Falmouth, MA 02540

RE: Building Height in BR Zoning District – Further Cases

Dear Frank:

This is a follow-up to my correspondence of March 20, 2019, as I have come across additional Massachusetts cases that further support the proposition that the allowed building height in Falmouth’s BR District is not restricted to 2½ stories.

Murray v. Board of Appeals of Barnstable, 22 Mass. App. Ct. 473 (1986), concerned whether certain dimensional regulations in one section of Barnstable’s zoning by-law should have been considered by the Board of Appeals when it granted a special permit under another section of the by-law, to allow conversion of a non-conforming inn to apartments. The Appeals Court held, “the absence of an explicit reference to (the other by-law section) is a strong indication that the drafters intended an exclusion. See First Nat’l Bank v. Judge Baker Guidance Center, 13 Mass. App. Ct. 144, 153 (1982). Moreover, it has also been stated, in the context of statutory interpretation, that if an omission from a statute was intended (e.g., a specific cross reference), no court can supply it; if the omission was due to inadvertence, an attempt to supply it would be tantamount to adding to a statute a meaning not intended by the Legislature (citing cases).” Murray v. Board of Appeals of Barnstable, 22 Mass. App. Ct. 473, 479.¹

In my prior correspondence, I stated that if there were any ambiguity, which we do not think there is, in interpreting a zoning by-law the less restrictive language should apply. A case in point is Jenkins v. Town of Pepperell, 18 Mass. App. Ct. 265 (1984), where the Court, in interpreting a zoning boundary, stated, “The proper remedy . . . is . . . the fixing of the boundary in accordance with the interpretation most favorable to the landowner.” Id., at 270. Also see Moore v. Town of Marblehead, Land Court, Misc. Case No. 124963 (Apr. 7, 1989), where the Court held that where a certain provision “is specific as to corner lots and silent as to other lots, the determination . . . should be that most favorable to, or chosen by, the land owner.”

¹ “Where the Legislature has carefully employed specific language in one paragraph of the statute, . . . but not in others which treat the same topic, . . . the language should not be implied where it is not present.” First National Bank v. Judge Baker Guidance Center, 13 Mass. App. Ct. 144, 153 (1982).
I would like to emphasize a point first made by Kevin Klauer in his note to Tom Bott on March 12, 2019, that the Business Redevelopment By-law contains a complete set of dimensional regulations unique to that district, and that the building height limit of 35 feet is not the only provision that differs from the general dimensional regulations elsewhere in the By-law. For instance, in the BR District the front yard setback is specified as 20 feet, Section 240-240.H.(6)(a). That setback has been accepted and applied without any question, despite the fact that Section 240-68.A. reads, “Minimum setbacks from the street frontage shall be 25 feet, with the following exceptions: . . .” The 20-foot setback for BR is not listed among the Section 240-68.A. exceptions. The building height provision in BR should be treated no differently. I think the confusion to some people is that the same number, 35, is in the general dimensional regulations and in the specific BR schedule. I think if the BR table stated 40 feet or 45 feet, no one would be suggesting that the 2 ½ stories limit was intended to apply as well.

If the 2004 zoning amendment creating the BR District was intended to require a building height limit of 2 ½ stories, Town Meeting could have made that clear. Given the language of Section 240-240.H.(5), the rules of statutory construction do not allow the Town to assume that the 2 ½ stories qualifier should be considered to apply. We think the absence of that language was intentional, and consistent with the purposes for which the BR District was created. If the Town feels that the 2 ½ story limit should apply in the future, the Zoning By-law can be amended to say so.

Thanks again for your efforts in this matter.

Very truly yours,

Bob Ament

Robert H. Ament

RHA/gmb
Enclosure

cc:  Rod Palmer, Building Commissioner
     Tom Bott, Town Planner
     Corey Pacheco, Asst. Town Planner
     Pat Kerfoot, Acting Chair
     Noreen Stockman, Zoning Administrator
     Mark Bogosian
These drawings are protected by copyright laws and may not be copied, reproduced, modified, distributed, electronically transmitted or used in any other way without the written consent of Brian K Bourque, the copyright owner. These drawings have been prepared for the project location indicated only.

Heufeld Accessory Apartment
78 Oakwood Ave.
Falmouth MA
Cape Cod

Bourque Project Services
75 Cross Rd
Waquoit MA
Cape Cod

Designed By
Drawn By
Checked By
Reviewed By
Submitted By
Project Manager

Date
Revision
Project ID
Drawing Code
CAD File Name
Plot Date

02/16/19
Revision
Heufeld_Oakwood
Drawing Code
Oakwood_121718
00/00/00

A
1/14/19
Porch roof side landing.
B
2/28/19

Layout revisions as requested by owner.

17'-8 5/8"
12

Timberline Roof Shingles
Ridge Vent
Wood Shingle Siding
Wood Frame Deck
Vetical Roof Shingles
Ridge Vent
PVC Trim
Wood Frame Deck
PVC Window Trim
Velux Skylights
Bilco Square Wrapped Columns

FRONT
RIGHT
LEFT
BACK
Floor Plan Notes

1. ALL NEW EXTERIOR WALL FRAMING SHALL BE 2"X6" KD @ 16" O.C., EXCEPT WHERE NOTED OTHERWISE.
2. ALL NEW INTERIOR PARTITION FRAMING SHALL BE 2"X4" KD @ 16" O.C., EXCEPT WHERE NOTED OTHERWISE.
3. UNLESS OTHERWISE SPECIFIED, DOOR AND WINDOWS ARE CENTERED BETWEEN WALLS and/or MILLWORK, OR A MINIMUM 3" OFF ADJACENT WALLS.
4. COORDINATE ALL ACCESS DOORS/ PANELS AND DETAILS TO ATTIC SPACES WHERE REQUIRED MEP TRADES.
5. WINDOWS ARE ANDERSON, G.C. TO PROVIDE WINDOW LIST, WINDOW STUD POCKETS ARE 3'.
6. COORDINATE FINAL DOWNSPOUT LOCATIONS WITH THE OWNER.
7. DIMENSIONS ARE FROM ROUGH FRAME, INTERIOR OR EXTERIOR, OR CENTER OF WALL AS INDICATED.
8. SEE ALL NOTES ON ALL DRAWINGS.

- Photo-Electric Smoke Detector
- Combination Photo-electric, Smoke Detector & Carbon Monoxide Detector
- Heat Detector
- Exhaust Fan
Proposed accessory apartment -
78 Oakwood Avenue
Map 38 Sec. 06 Parcel 014 Lot 017A
George and Kathleen Heufelder
revised 9-15-18

Top View

Floorplan

Scale 1" = 10 ft.

PROPOSED FOUNDATION 1.0 FT ABOVE EXISTING GRADE (SHOWN AS 103.6 ON CERTIFIED PLOT PLAN) TOP OF FOUNDATION PROPOSED 104.6.
Robert Leary  
196 Goeletta Drive  
East Falmouth, MA  

Falmouth Zoning Board of Appeals  
59 Town Hall Square  
Falmouth, MA  
CC Falmouth Planning Board  
CC Rod Palmer Building Commissioner  

April 8, 2019  

Dear Ms. Stockman,  

In April of 2018 the Messer’s who reside at 190 Goeletta Drive East Falmouth applied for and received approval to construct a detached accessory apartment. As a Planning Board member and direct abutter I had to recuse myself. However, despite my testimony at the open hearings and numerous letters with diagrams, photos and quotes from the bylaw by me, my wife, and the neighbors across the cul-de-sac, the project was approved without addressing any of our concerns. One of the issues I raised was about the placement of the septic system due to its placement along the boundary between my property and theirs, which has an 18-foot downward elevation change from their property to mine. They pledged in an open hearing that all disturbed areas would be restored to their natural vegetative state. However due to the poor sighting of the accessory structure and hence its septic system, a 5 foot tall by 60 foot long concrete wall with a driveway on top now runs along the property bounds. This is a major departure from the plans first approved by the Planning Board and then permitted by the ZBA. Changes of this magnitude should have come back for Board review and public comment.  
The following quotes from the Accessory Apartment bylaw and the Findings and decision by the ZBA and Planning Board are accompanied by photos illustrating how deeply flawed the decision was to allow the construction of this unit in this location on the property.  
The careless planning of this project has led to the changes made that were not part of the original decisions. Given that these changes were granted solely through administrative channels and cannot be undone, I expect that the tenets of the bylaw that were obviously ignored be strictly monitored and enforced prior to the issuance of a certificate of occupancy.  

Section 5 a) Procedures: The application for site plan review shall include the information contained in Section 240-195 C, which states. The applicant shall submit such materials as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets and to screen objectionable features from neighbors. Design features shall include but not be limited to site planning, building placement, building size, design compatibility, exterior appearance, construction materials and finishes, parking and roadways, landscaping and site grading, building entrance and exit placement.  

April 13, 2018 ZBA Findings D Page 7. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhoods visual character as the subject property is buffered by native vegetation that is existing, and there is no impact on any view or vista from the roadway or abutting properties.  

ZBA Findings D Page 7 the photos show that the natural buffer was completely stripped and replaced with a 5-foot concrete wall and a driveway. The front of the property displays an old pickup truck and piles of logs and debris. It is the permit granting authorities responsibility to enforce the Finding that the visual character will be improved prior to issuance of a Certificate of Occupancy.
April 13, 2018 ZBA Conditions No. 6 Page 9. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by the Board shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

Changing the location of the driveway and adding a 5-foot tall by 60 foot long concrete block wall is hardly a “minor change” from what was proposed and approved.

April 13, 2018 ZBA Findings D Page 7 also stated that there does not appear to be any impact on the neighborhoods visual character as the subject property is buffered by native vegetation that is existing. All of the native vegetation along the subject properties boundary has been stripped of all vegetation. The applicants stated at their hearing that the disturbed areas where to be restored to its natural vegetative state. A concrete wall does not meet that definition. I expect that the ZBA will enforce the re-vegetation of the property border prior to the issuance of a Certificate of Occupancy.

March 29, 2018 Planning Board Condition No. 1 Page 3. The plan shall be constructed as approved. Any changes shall be reviewed by the Planning Board to determine if a modification of this decision is necessary. Pursuant to Sec. 240-183.B, of the Zoning bylaw, NO PERMIT for full or partial occupancy shall be issued until the Planning Board is satisfied that the conditions of this approval and predecessor approvals have been met. Again, there was no further review undertaken by the Planning Board, which stated, “ANY CHANGES” shall be reviewed. To my knowledge no one on the Planning Board was made aware of the changes being requested.
The Town Engineer in his report cited concerns about the grading and removal of vegetation that will increase storm water run off on to my property which is essentially a bowl. He recommends dry wells and a rain garden to mitigate run-off. These recommendations should be required and installed before a certificate of occupancy is issued.

The photos illustrate the engineers concerns. The building permit holder has not provided hay bales, screening or compost tubes to mitigate run-off and erosion from the subject property on to the abutter's property. I, as a licensed construction supervisor, am required to contain all run-off and erosion materials on site. This permit holder has not done so. These measures should have been taken once the vegetation was removed to prevent this run-off from occurring.
Photo above illustrates run-off on to my property as well as into the roadway. The property bound is the green telephone bollard.

Another issue that has cropped up is the destruction of the root system of a very large caliper oak tree. I will not be sure whose property the tree is on until I have my property surveyed, but regardless of whose property the tree is on the damage to its root system will necessitate its removal. Since this damage was done in conjunction with the project it is incumbent upon the Messer’s to have this tree removed regardless of whose property it is on.
The above photos illustrate the view from the front 181 Goeletta Drive owned by my stepdaughter and son-in-law. They are putting their house on the market and all of the realtors who have come to view the property have asked about "the mess across the street". They all concur that it will have an impact on the value of their house, as it will be used as a bargaining chip to lower the value of the property.
This photo was taken from the end of my driveway facing directly towards the front of the Messer property. Can you find the primary residence? The primary tenant of the Accessory Apartment bylaw was to maintain the appearance of a single-family residence. This fails that standard.

This photo shows the approach to the Messer property. Again I ask, where is the primary dwelling?
This photo taken from my property illustrates the relationship between the location of the accessory structure and the primary dwelling. It also illustrates the incompatibility of the design of the accessory unit as compared to the primary unit. Compatible architectural design between the primary and accessory structures was also a major component of the bylaw. This photo clearing highlights how incompatible this structure is.
The conditions I expect be enforced prior to the issuance of a Certificate of Occupancy are as follows:

1. Since a second driveway has been added, a condition should be added that requires that ALL VEHICLES be parked in the two driveways, including the pick-up truck that now resides at the front of the property.
2. The pile of logs littering the front of the property shall be removed from the front of the property. Removal of these logs and cleanup of the front of the property is conditioned by the language in Section 240-195c.
3. The disturbed area along the street boundary shall be landscaped to prevent soil run off on to the roadway.
4. The vegetation that was removed along my property bound shall also be landscaped as per the applicants pledge in an open hearing as well as the language regarding buffering in the bylaw.
5. All run-off containment systems are to be installed as per the Engineering Departments comments.
6. The large caliper tree that has had its roots destroyed shall to be taken down at the applicant's expense.

In closing, I would suggest that the Board members take a look at this property so that they can understand my consternation with this project. And I do expect that these conditions be enforced prior to issuance of their Certificate of Occupancy without exception. This project reflects everything appearance wise that was not intended in this bylaw, the location of the structure appears as if the lot is sub-divided. This was a major concern at the public hearings we held prior to the adoption of this bylaw. The design of the building is not in harmony with the design of the primary residence. The accessory structure is the dominant structure on the site due to its location. Its appearance is that of a mobile home. Another error in the decision was the square footage calculation that was not based on the definitions in the Town Code regarding “Accessory Structures”. The ZBA allowed the Messer’s to include bathrooms in the primary structure towards their 40% calculation yet did not count them in determining the square footage in the accessory structure. It is my intention, as one of the co-authors of the accessory apartment bylaw, that the Messer’s be held to the strictest standards of the bylaw that remain to be enforced. I also hope that by illustrating how flawed this decision was that the Planning Board and the ZBA would be more mindful of the adherence to the letter of the Accessory Apartment bylaw in their future decisions.

Sincerely,

Robert J. Leary
196 Goelletta Drive
Hatchville, MA
To the Planning Board

April 2, 2019

We respectfully request the following change to our design:

We would like to have the parking for our accessory apartment utilize the already excavated area adjacent to the building for the following reasons:

1. The land is already excavated because of septic and site work. At the time that the original plan was submitted, the excavator was unaware of how much would have to be cleared due to unforeseen clay/fill problems. As a result, we added a retaining wall to mitigate impact for our abutter.
2. It is a natural entry for the building.
3. It will provide a step-free entry into the building during snowy and icy weather which will be of significant benefit as we age.
4. The parking plan as originally submitted is logistically difficult and potentially unsafe. To back out of the spots that were originally planned would require a difficult turn without driving off the edge of a steep pitch.
5. The parking plan as originally submitted is prohibitively expensive (will require much more in retaining walls than originally anticipated) and would require yet more disruption of the land. The existing driveway where this excavation would need to occur is already under stress and may not survive more heavy work without extensive repair.

We will make the parking area as small as is allowed by code and will replant any unused areas.

Thank you for your consideration.

Thomas and Marysia Messer
190 Goeletta Dr.
Hatchville MA
774-392-1252
tmsjmesser55@gmail.com
* H2O Tank is already installed.

**Proposed Change to Driveway**

- Remove parking from here.
March 9, 2019

Billing Address:
Coffman Realty Inc.
Att: Deborah Villa
632 Washington Street
Easton, MA 02375

Property Address:
CVS-Falmouth/Cape Cod Cooperative Ban
105 Davis Straits Rd
Falmouth, MA 02540

2019 Landscape Management Proposal

We are pleased to submit the following proposal for landscape management services. The scope of services to be performed shall be indicated herein.

Plant Replacement
• Dig and remove 180 failing Privet at front of parking areas
• Planting beds raked and prepared for planting
• Deliver and install the following plant stock:

(70) Calamagrostis "Karl Foerster" 2 Gal
(42) Taxus cuspidata "Greenwave" 36"

• Yews Planted in 10' sections alternated with 10' sections of Karl Foerster Grass's
• Yews and grass's planted in straight line to create screening from parked cars
• All plants installed with proper soil amendments
• Deliver and install (4) yards of premium Brown Pine mulch
• Mulch installed to top dress planting beds at front of parking areas
• Price includes all labor, material, disposal and plant stock

All facets of landscape design, construction & maintenance
March 25, 2019

Ms. Susan Moran
Chairwoman, Board of Selectmen
59 Town Hall Square
Falmouth, MA 02540

Dear Ms. Moran,

I was excited to hear that the State has accepted Falmouth’s Housing Production Plan which outlines the needs and goals for housing in our community. According to this Plan, Falmouth has a long way to go in meeting the housing demands of the community and it will take a lot of people working together to begin to meet these goals.

I attended the Community Preservation Committee’s annual assessment meeting where residents had the opportunity to opine on the greatest needs of the town. Not surprisingly, there was consensus that it was affordable housing.

As I know you are aware, Falmouth has an affordable housing crisis. The critical housing shortage in Falmouth is an obstacle to attracting and retaining a young and talented workforce which affects our local economy and threatens our quality of life. All communities need a diverse, productive workforce to thrive. To retain our low-moderate income residents we must have housing they can afford.

For those of us in Falmouth who want to create affordable housing and be part of the solution, we need the help and support of the Town’s leadership.

In order to do this, the overall process needs to become much more efficient. The extensive time and frustration involved by housing developers for review of projects, applications for funding and review and processing of legal documents is averse to the development of affordable housing.

The difficult and frustrating process for every developer, both non-profit and for-profit, to commence and complete a project will stop developers from trying and we will never even come close to meeting the housing demands.

The lack of efficiency makes it very discouraging and exasperating in trying to create affordable housing in this environment. If we are to meet the challenges upon the Town relative to affordable housing goals, the “red carpet” should be rolled out at Town Hall for those trying to create something that the Town so desperately needs. There needs to be a big shift in the current procedures and actions pertaining to affordable housing.

Creating set procedures with timelines is a great way to start to streamline the process of bringing housing to the community and giving developers assurance that the Town is organized, efficient, and will review and process projects in an efficient and timely manner. We need a set of written guidelines, specifically LIP guidelines that will facilitate a timely and efficient process. The guidelines should include what is required for initial review of projects in terms of project plans, how...
long a developer will expect for an initial meeting with the Town’s LIP Committee or Town Staff to review the proposal, how the feedback to the developer will be processed, when and by whom, who will coordinate the establishment of the review team, how long the developer can expect before the project is presented to the Board of Selectmen in the case of a LIP approval, what legal documents will be required of the developer, who is to review them and when and how long this process will take. Such a set of guidelines should be fair to the developer and support the notion of creating affordable housing. But most importantly, such guidelines should be available to developers as the first point of contact when an inquiry is made about development of affordable housing in Falmouth. Without this in place, there is no consistency, there is not set procedure for who is to do what and when, and there are repeated requests for the same information from different departments.

I am requesting that the Board of Selectmen consider establishing a working group to meet **within the next 30 days** to address the current inefficiencies and problems in the process. I recommend that this group include at least a representative from the Town Manager’s office, the Housing Coordinator, a member of the Affordable Housing Committee, a member of the Board of Selectmen, a representative from the Falmouth Housing Trust and from the Falmouth Housing Corporation, and a for-profit affordable housing developer or developer attorney. This working group can review the current LIP guidelines and develop new guidelines and procedures for overall processing of affordable housing application, LIP or otherwise. The goal would be to create a package of information that comprises a welcome introduction to encourage developers to bring their projects to our community for consideration and will illustrate how they will be efficiently processed by the Town.

I fear that if this issue is not addressed immediately that the Town will cease to have developers who want to be part of the solution to Falmouth’s affordable housing crisis.

I look forward to working with the Town and community members to create a process that is efficient and equitable in our quest to bring more affordable housing to Falmouth.

Very truly yours,

Karen L. Bissonnette
Executive Director
Falmouth Housing Trust, Inc.