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

June 6, 2019

RE: Minutes for Public Hearings and Open Meeting held on May 30, 2019 at 6:30 PM in the Selectmen’s Meeting Room – Town Hall Square

Dear Board Members:

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

New Hearing:

#019-19 Savon Hatem, LLC – 561 Thomas B. Landers Road, Hatchville
#020-19 Meawad, 0 & 213 North Falmouth Highway, North Falmouth

Open Meeting:

1. Minutes of and May 23, 2019
2. Board Administrative Approval- Bogosian Development LLC, 587 Main Street Falmouth
3. Discuss and Vote special permit #115-18 Woods Hole Partners LLC, 533 Woods Hole Road, Woods Hole
4. Board Updates
5. Discuss Date for Future Workshop
6. Board Discussion RE: Zoning Recodification Committee
7. Future Agenda Items

Terrence Hurrie, Chairman, Board of Appeals:

Date Minutes filed with Town Clerk: ____________________________

Respectfully submitted
Ashley DeMello, Office Assistant
Noreen Stockman, Zoning Administrator
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<th>Document(s) Submitted</th>
<th>Submitted Date</th>
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<td>Application Fee</td>
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<td>S. McKenzie</td>
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May 30, 2019 – 6:30 PM
DRAFT Minutes
Board of Appeals Public Hearing and Open Meeting
Selectmen’s Meeting Room – Town Hall, Falmouth

PRESENT: Terrence Hurie (Chairman), Kenneth Foreman (Vice Chairman), Robert Dugan (Clerk), Edward Van Keuren (Member), Gerald Potamis (Member), Mary Barry (Associate) and James Morse (Associate)
Zoning Administrator – Noreen Stockman

New hearings: 6:30 p.m.

#019-19 Savon Hatem LLC, 561 Thomas B. Landers Road – Hatchville: special permit to allow 4 parking spaces for the display of used cars

R. Dugan read the ‘Notice of Public Hearing’ into the records and read the following referrals:

Engineering – No effect on public rights of way no storm water runoff on public roads

Stephen McKenzie representing applicant, this is a simple application, no changes to site, this is a modification to special permits that have been issued on the site. We are asking to designate 4 parking spaces for used car sales, the applicant owns other properties where he sells used cars and has always had a dealer’s license, however some of those properties are being occupies as other businesses so we are looking to put cars here at this site.

G. Potamis- Is there any reason that this would be prohibited?

S. McKenzie – No, he needs a special permit to sell vehicles on site under 240-57 G.

T. Hurrie – Spill kit to be on site, would you be amenable?

S. McKenzie – That’s fine.

K. Forman moved to close hearing, seconded by E. Van Keuren. 5-0 vote to close.

G. Potamis moved to approve application #019-19. Seconded by E. Van Keuren.

Findings:

1) 240-57 G.
2) No changes to existing site except designated parking spaces for sale vehicles
3) Amenable to spill kit on site

Conditions:

1) Per plans
2) Have spill kit on site
3) Limited to 4 vehicles for sale

All in favor 5-0.
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Zoning Administrator – Noreen Stockman

#020-19 Gawdat F. Meawad, 0 & 213 North Falmouth Highway, No. Falmouth

R. Dugan read the ‘Notice of Public Hearing’ into the record and read the following referrals:

There have been several referrals received after the department meeting and no correspondence.

Nick Mirrone is the applicant’s representative and Michael Borselli is the project Engineer.

Michael Borselli, project engineer: –# 0 and #213 North Falmouth Highway contains 3.7 acres of land, and abuts town-owned property. Residential properties are sited to the south and west. Toward the east is Route 28, and to the north is a subdivision. We are south of Rt 28A rotary and Curley Blvd. The land has frontage on 28A, with a proposed common driveway, that terminates at a cul-de-sac. There are 6 buildings at the cul-de-sac, with 2 buildings proximate to 28A, for a density of density 4.3 units per acre. The roadway is designed to be a driveway and will meet Falmouth’s subdivision regulations. The cul-de-sac is 22’ wide and will meet the required turning radius. The drainage system has also been designed to Falmouth’s subdivision regulations. A common shared septic system will collect wastewater, and will meet Title V. Each unit will have 3 BR’s, a single car garage, and an additional parking space in front of the garage. We have put in additional parking, 4 alongside of the driveway, and along the cul-de-sac are an additional 7 spaces. The Fire Dept. was satisfied, and the Water referral is standard.

Hydrants are near the cul-de-sac, with one at the roadway, and one on North Falmouth Hwy. I have spoken to the Engineering department and fully expect to address their comments/concerns. Bus stop will be at the base of the driveway, on the north side. A play area is planned beyond the cul-de-sac. We met with neighbors to give a preview of project. We talked about the concern for speeding on 28 A, and noted that there will be an acceptable site view distance. There is invasive vegetation, which we plan to remove. Engineering wanted us to provide a site distance triangle, which we will provide. This plan also shows nearby houses that surround the property.

J. Morse – Fire chief signed off on parking plan?

M. Borselli – The Fire Department is all set, and there are the additional 6 parking spaces surrounding the cul-de-sac. We rec’d no negative comments.

G. Potamis – Sidewalks?

M. Borselli – Not at the moment, where this is a common driveway. Some subdivisions have them and some don’t.
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G. Potamis – Would you be amenable to adding them?  
M. Borselli – Yes.  
G. Potamis – Standard title V?
  
M. Borselli – There is a section of the property that is in the CPOD, that may require denitrification systems, and we are asking that to be waived.  
G. Potamis – Pick up trash and snow?  
M. Borselli – It would be private, and the Town wouldn’t be responsible for snow removal.  
G. Potamis – 4 units to be affordable?  
M. Borselli – Yes.  
K. Foreman – I second Mr. Potamis’ request about sidewalks. How about a bus stop?  
M. Borselli – It would be at the intersection.  
K. Foreman – How long is the roadway?  
M. Borselli – 550 ft long. - if you count going around the cul-de-sac, it is 750 feet in length.  
K. Foreman – Don’t you think it would be a good idea for a sidewalk? How about a lighting plan?  
N. Mirrione – Post light at the end of each driveway, and in the middle some common lighting.  
K. Foreman – Landscape plan?  
N. Mirrione – Not yet, we know we will have to provide one.  
K. Foreman – There is a concern about the impact on abutters.  
N. Mirrione – We will submit the plans before final approval.  
K. Foreman – Is there a pro-forma? There is a play area shown, what is in that?  
N. Mirrione – There is a pro-forma in the file. Grass area, no equipment. We chose that area because the Town suggested that there may be some footpath, which we will try to connect to if we can.  
K. Foreman – There should be some recreational space for the kids in the development, just wondering what the actual area is.  
N. Mirrione – They can play ball, soccer, an area they can gather.
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K.Foreman – Waivers- what specifics are you looking for?

NM – We listed them in the application, it was sort of a blanket waiver.

K.Foreman – I’d like to see specificity.

N.Mirrione – Other towns have found it more acceptable for a blanket waiver, if we get more specific on waivers and someone challenges it then we have to come back and it wastes time.

K.Foreman – We get specific waivers.

N.Mirrione – We will provide them.

K.Foreman – Dimensions of play area?

M.Borselli – 50’x100’.

E.Van Keuren - I was concerned about sidewalks too.

M.Borselli – I know that buses que up on the entrance to the different roadways nearby.

E.Van Keuren – Snow removal?

M.Borselli – Privately managed.

E.Van Keuren – Place to dump the snow?

M.Borselli – We will stockpile it to the side.

E.Van Keuren – Have you been to the Planning Board?

M.Borselli – Yes, and presented the plans to get feedback.

R.Dugan – There’s large grade changes – retaining walls after the 2nd duplex?

M.Borselli – The topo is moderate, this one area specific the contours are tighter and this building will require some excavation and grading. The retaining wall will have a significant height 10-12 feet, and taper down to 4 or 6 feet. It’s proposed as masonry.

R.Dugan – Placement of affordable units?

N.Mirrione – Not specified yet, but they will be spread throughout.

R.Dugan – Mailbox placement? Could you place one at the top and one at the bottom?

M.Borselli – It will probably be up to USPS; we could do two, we just have to talk to the post office.
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R.Dugan – we do need specific waiver lists, and the plans on file are from 21 Pine Street. Is that architect preparing plans for this development?

N.Mirrione – We haven’t done them yet. The plans were submitted as an example; the developer will have architectural plans prepared.

R.Dugan – Will you be submitting them for the actual review? I’d like to see actual floor plans and elevations.

M.Barry – Handicap accessible?

N.Mirrione – If someone buys one and needs accessibility, we can make them accessible, upon request. There is a master bedroom panned for the first floor.

G.Potamis – Making doors wide enough to be handicap accessible/visitabile. I would suggest one have handicap accessibility. You may want to look into that. The other is low level light at the playground. Since this is a private driveway the police cannot enforce parking in the driveway. Maybe that should be in your documents. Considered waiving the association’s fee for the 40B units?

M.Barry – Consideration to solar panel use?

N.Mirrione – It might not be the best site for them, due to trees and building orientation.

T.Hurrie– Would this application be considered incomplete without landscaping and lighting plans and the specific waivers requested.

N.Stockman – You do need to submit a specific waiver and lighting plans.

T.Hurrie – Condo docs, would you be amenable to submit for the Board to review.

N.Mirrione – We haven’t submitted drafts yet.

T.Hurrie – Would you be amenable to dark sky compliant lighting?

N.Mirrione – Yes

T.Hurrie – Any buffering?

N.Mirrione – The landscaping is important so we will buffer as necessary to create a nice development.

T.Hurrie – Natural or fencing, both?

N.Mirrione – Site specific.
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N.Mirrone – We are working on the number now. We are leaning toward making the condo fee to be the same as market units, and selling the units for less.

T.Hurrie. – Draft documents, check with Noreen about Town Counsel reviewing them.

E.Van Keuren – How long do you think this will take?

N.Mirrone – Depends how fast they sell; we are proposing market rate units in the mid $500,000. We have been told that there is a need for that. I would hope if we get approval, we could get some work done over the winter, and hopefully be done by this time next year.

R.Dugan – Sale schedule?

N.Mirrone – No, but every 4th unit has to be affordable.

R.Dugan – There are handicap visitable units available, you may want to look at some units to make them that way in case someone needs to convert.

N.Mirrone – I would say we would look into that and where possible could put wider doorways and hall ways.

K.Foreman – Waste treatment – you’re sending everything to a common leach field. The denitrification system might be more efficient and economic, and reduce nitrogen.

N.Mirrone - It will pressure dose into the leach field.

K.Foreman – You may think about these new systems that denitrify and may be more efficient.

G.Potamis – A “layer cake” septic system may be cheaper than other systems.

M.Barry – There is one building that is really close to the lot line. How close is the setback to the southern end?

M.Borselli – I can tell you by observation that this house is approx. 15’ to the property line. I will also put dimensions on a revised plan.

R.Dugan – 2nd retaining wall at the top?

M.Borselli – Yes same material as the other wall, and about 5 feet at the tallest point.

R.Dugan – Fences proposed?

N.Mirrone – We will show some privacy fencing when we do the landscape plan.

Public Comment:
Roger Fairbanks, 218 No. Falmouth Hwy. – I don’t have a problem with this. The bus stop shelter may be a waste. Safety issue during construction, I want all construction vehicles be parked appropriately. I need visibility when exiting my house.

Dennis Doonan, 223 No.Falmouth Hwy. – Project manager provided few specific details. The proposal is to put as many units as possible for the lowest cost. Plastic siding is proposed to be used and there would be no way that the Historical Commission would allow me to do that. The primary objective is to build for the least cost and sell for the most. The owner is not from Falmouth, and has no concern of the long-term effects. I would request you get more information about materials being used, denitrification system and lighting. I would like to have more specifics addressed.

G.Potamis – You realize we may be able to do some things and not others as this under a State law.

Allen Wilson, 197 No.Falmouth Hwy – I’m concerned about the environment, safety and issues about drainage and retaining walls. Cars speed around this curve on 28A, and the lack of visibility is important. There is a utility pole in the site line, and there has to be consideration to this. The other thing I would like to request is that North Falmouth Elementary School put up a blinking light. Close to the driveway I would like the Board to consider a yellow light. That whole area is just waiting for an accident to occur.

G.Potamis – One thing that I don’t know, if this is a state highway I’m not sure if the traffic advisory committee can help put in a blinking light there.

T.Hurrie – 28A is a State highway, and we are limited as to what we can do. Mass DOT would trump and local rules. Falmouth’s traffic officer can be contacted for speed enforcement.

Jack Afarian – 195 No.Falmouth Hwy. – I share Allen’s concerns about the safety. I cleared an area out for better site lines. My other concern is that there has been no specifics, vegetation between property lines, how much will be cleared out so there will be privacy. Is there any possibility that the cul-de-sac could be moved more to the east so that it is not so close?

R.Dugan – If anyone has any comments or concerns please send them in. It’s easier for us.

Ariel Ruban, 45 McMenemy Drive – Some things that we are worried about: what we will be looking at when the construction in finished and what will remain that is there currently,
fencing, and retaining wall clearing and drainage. The schedule is also important, and how will that affect the abutting properties. What is the zoning regulation for the housing per acre?

K.Foreman – 1 single family dwelling.

Alberta Anderson – 45 McMenemy Drive – The topography is very rocky. Would there be any blasting because of the rock and what would that do to the surrounding houses? I have concerns about the drainage. Why couldn’t this move a bit further, it is very close to our house?

T.Hurrie.- They need to remain within their property lines. We will require a set of waivers, including setbacks to lot lines.

M.Borselli – The topography will result in grading on the edges. There will be a decrease in stormwater runoff because the topography will be lower than it is today. This is a glacial moraine; in my experience regarding rocks, there is no ledge, and unless the boulders are bigger than a car, most would be able to be managed by an excavator, or the boulder could be cut.

K.Foreman – Regarding moving the development closer to the town-owned land, it looks like you could move the unit away from the south, toward the north and east.

Esther Grady – 41 McMenemy Drive – I would like to voice my concerns on the drainage. I have lived here for 20 years. This is elevated higher than our homes.

N.Stockman – If there were to be blasting, there would be a pre-blast survey. They would video tape your house, and the Fire Dept. would have to oversee any blasting per State protocol. You would have state protection.

M.Borselli – There was a comment from Engineering that we agree with, so drywells will be put in at the back side of the property to help mitigate the runoff. There will also be erosion control measures in place during construction.

T.Hurrie – There are a number of things we would expect at the next meeting. The abutters have several concerns. Condo docs, monitoring agreement, lighting and landscaping plan. Specific waiver list.

K.Foreman – I would love it if they came back with some information on the layer cake system. I think this would be a good spot.
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T.Hurrie – Rock formations to be looked at in the rear.

N.Mirrione – It’s hard to do a full condo doc,

T.Hurrie -Speak to Noreen about this, because I know that Town Council has to review this.

R.Dugan – I would like to see a different set of plans, true elevations.

R. Dugan made a motion to continue to July 11th at 6:30PM. E.Van Keuren seconded motion.5-0
All in favor.

Took a 5 minute break at 7:40.

Open Meeting:

587 Main Street, Falmouth:

K.Foreman made a motion to take #2 out of order. E.Van Keuren seconded motion. All in favor.
R.Dugan recused himself, and exited the meeting.

J.Morse – Stated that he filed a disclosure, reporting that Sean Daily (proposed tenant for 587 Main Street) is a friend of his, and that Attorney Klauer did the closing on his condo. He stated that he believes he does not have a conflict, but is not voting.

T.Hurrie – Mary Barry will be appointed as a voting member.

2) K.Klauer – Appeared before the Board, representing the applicant, who received special permit in 2017. In trying to get the occupancy permit, we noticed that there were plan discrepancies. The changes consist of walkway and patio areas have increased, the building is 3 ft longer than originally approved, due to a clerical error, the basement was to be should remain unfinished, with storage, and the third floor layout and roof line have been changed. The walkways were changed for handicap accessibility, and have improved the access. We have submitted a revised landscape plan. The increase in the building length was based off a permit set; what was submitted did differ from the site plan. Correcting structural issues that arose caused this. Setbacks are met, lot coverage is under the maximum allowed. There is an additional 161sf of building area. The applicant removed sheds at the rear of the building. The lot coverage is 19.3%. Rod
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Palmer, Building Commissioner, believed that one room in the basement is for an office, but it is intended for storage of liquor and computers/servers. We don’t intend to use it as office space. The 3rd floor has been rearranged, yet maintaining the same bedroom count. The ridge line has been altered. The site meets all zoning regulations as what was approved, lot coverage is below the maximum allowed, and setbacks are conforming. Signs have been installed at the parking lot for residents parking, a sign has been installed for exiting left turn only, the fencing has mostly been installed, and dark sky compliant lighting has been installed. We hope to have landscaping start tomorrow.

M.Barry – When were the walkways put in?

K.Klauer – March/April.

M.Barry – At that point in time was there something submitted for changes?

K.Klauer – No that is why we are here.

E.Van Keuren – I’m concerned about the height of the building, and I didn’t see the left hand turn only sign installed.

K.Klauer – We have a height certificate showing that it’s not over the height allowance, and the left turn only sign was installed today.

K.Foreman – I’m not sympathetic, the building is 3ft longer than proposed, that isn’t a minor change; there are several changes. I think abutters deserve to come back and voice their concerns. I believe that we should not grant the administrative relief, and reopen the hearing, to maintain integrity for the process.

G.Potamis – I concur with Mr. Van Keuren; once we have a chance to review everything we can come back. I think we should allow Sean O’Malley [sic] to open. I do have concerns that the 3rd floor layout could lend itself to 2 units. Would you go back to original plan?

K.Klauer – It would be harder because it’s built. The number of bedrooms remain the same. These changes are not de minimus- they don’t change the nature of the project. It meets setback requirements, and is not a noticeable change; nothing dramatic was done. It remains the same, and could be approved administrative.
M. Bogosian (developer) – Mistakes were made. For this project I hired a consulting company to do this work, and didn’t realize this change. These minor changes should have been submitted before. It was an oversite, and not done intentionally.

G. Potamis – If we allow the occupancy to occur and continue the hearing, does that negate the commercial use? What happens if we require a hearing?

N. Stockman – The occupancy would be delayed.

M. Bogosian – If we were to get administrative approval, I would wait for everyone else to move in; let Sean get started, and then come back, when everything is done.

T. Hurrie – Administrative approvals are minor approvals. I think the changes made exceed the administrative approval.

G. Potamis – The building is 3 ft longer.

M. Barry – I have an issue setting a precedent.

G. Potamis – A precedent is case by case, and I don’t think there is anything that would bind us to a future decision.

M. Barry – The way I see it, the conditions say any deviation, no matter how minor, you have to have approval before implementing the change.

K. Foreman – We have all our opinions, I think it’s time to vote.

K. Klauer – The building itself is by right for lot coverage and setbacks. The special permit was for density. We would post a bond, we could talk to abutters. The nature of the project is the same.

G. Potamis – I like the idea of sending a registered letter to the abutters, and I’m not sure what the bond would do.

K. Foreman – My concern is what we have before us. I don’t think it could be done administratively; we already have an enforcement issue. I feel this hearing needs to be reopened.

G. Potamis – In addition to everything else I said, procedures can be changed by us.

K. Foreman – It can, but I don’t think it can be done now.
T. Hurrie — I agree with Ken. I’m sympathetic to Sean, but the Administrative Approval vote exceeds what we do administratively.

K. Foreman — Do we vote to deny the Administrative Approval, and have them come back?

B. Ament — My law firm represents Mr. Bogosian. A building permit was issued, and the former Zoning Administrator signed off on it. There also could have been an appeal during the period of 30 days from the issuance of a building permit, but no one appealed. You need to solve people’s problems, and figure out a way that this can be worked out.

Sean Daily (tenant) — This process is less emotional and more financial; if I don’t get the business open, it will be terrible. I missed Memorial Day weekend.

G. Potamis — Could we continue this for a week, and get more information?

K. Foreman — There may be others affected, where it’s on Main Street.

K. Klauer — We can submit tomorrow, and give more information.

N. Stockman — I believe that the Board needs to determine if this will be an Administrative approval, or require that the hearing be reopened.

G. Potamis made a motion to approve this administratively with conditions. E. Van Keuren seconded the motion. Opposed — M. Barry, G. Potamis, K. Foreman. Motion did not carry 2-3.

2) Minutes of May 23, 2019 - approved 5-0.

3) 533 Woods Hole Road, Woods Hole: Discuss and Vote 533 Woods Hole Partners, The Board and Attorney Ament reviewed and discussed the language of the proposed conditions.

R. Dugan made a motion to make changes discussed this evening, and send the Decision back out to the Board for review. E. Van Keuren seconded the motion to review a further draft at the June 6, 2019 meeting. Unanimous approval.

4) Board updates - none

5) Discuss Date for Future Workshop
May 30, 2019 – 6:30 PM
DRAFT Minutes
Board of Appeals Public Hearing and Open Meeting
Selectmen’s Meeting Room – Town Hall, Falmouth

PRESENT: Terrence Hurrie (Chairman), Kenneth Foreman (Vice Chairman), Robert Dugan (Clerk), Edward Van Keuren (Member), Gerald Potamis (Member), Mary Barry (Associate) and James Morse (Associate)
Zoning Administrator – Noreen Stockman

-We are coming up on our usual date for a workshop, we can think about upcoming dates now that we have a full Board.

6) Board discussion RE Zoning Recodification - in progress

7) Future Agenda Items - none

Meeting Adjourned 9:54pm

Respectfully submitted,

Ashley DeMello, Office Assistant