Falmouth Planning Board
Selectmen’s Meeting Room, Town Hall – June 2, 2020
Virtual Meeting - 6:30 pm
MINUTES

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

Statement read by the Clerk:
In accordance with the Governor’s Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Corona virus outbreak emergency, the May 12, 2020 public meeting of the Falmouth Planning Board shall be physically closed to the public to avoid group congregation.
Alternative public access to this meeting shall be provided in the following manner:
1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Planning Board utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
   a. Zoom Login instructions:
      i. Instructions and the meeting link for this specific meeting can be found at the following web address: http://www.falmouthmass.us/1112/Planning-Board
      ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to planning@falmouthma.gov at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Planning Board may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Planning Board may contact the Planning Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to the planning@falmouthma.gov so that they may be displayed for remote public access viewing.

APPROVAL NOT REQUIRED PLAN:
Applicant: Gregory Clancy – Plan of Land to exchange equal areas of land between Lots 4 and 5, 104 and 108 Hayway Road
T.Bott - This is a one for one swap to improve setbacks to allow for a pool. There is adequate frontage.

MOTION by P.Harting-Barrat/J.Fox that the Planning Board vote to endorse “Approval under the Subdivision Control Law not required”. The plan does not depict a subdivision by definition. This endorsement is without regard to zoning or buildability and should not be construed as an approval that the lots shown are entitled to a building permit.
Voted 7-0-0

PLANNING BOARD DISCUSSION:
Lewis Neck Rd – Referral to Board of Selectmen for 40B Site Approval Letter (PEL)
T.Bott – The covenant is one of the issues that Town Counsel brought up.
P.Dreyer – We spent a lot of time on this project previously and we have a Covenant that says one house. We have a letter from the chairman of the Falmouth Housing Trust where four times she mentions one lot. Yet the application to MA Housing shows four houses. Today at the site visit, they talked about four houses as well; two affordable and two at market rate. I’m curious how we went from one to four.

T.Bott – We are at the point in the process where the applicant is asking for a Site Approval Letter and we provide our comments. They will issue the site approval letter with whatever sort of conditions. People can apply for things; they can ask for things and go through the process to find out if they can actually do those things. In the context of their ANR approval they talked about one lot. They got to four units by essentially asking for a four-lot subdivision.

P.Harting-Barrat – I couldn’t figure out why the Covenant wasn’t mentioned on the application. Can all four units go on our list?

J.Fox – Yes, they all count towards it.

J.Druley – Only the two 80 per cent ones will count. It is still affordable housing for the community. The two at 100 per cent do not go on the SHI; but they are considered affordable. If we release them from the Covenant, does that make this easier for them? Will we be considering that at some point?

T.Bott – Town Counsel is of the opinion that a Covenant on the property is an agreement between the two parties. It’s not Zoning and cannot be overwritten. In order for the property to be eligible to have four housing units, the Planning Board would need to vote to release the property from the Covenant that you required one unit on the site.

J.Fox – There was lots of discussion about the safety and adequate access of this road. We generally don’t allow a dead end longer than 500 feet; but we were told it was only one house.

P.Kerfoot - It was adamantly stated that it was for one house and that’s why a Covenant was put in place. This is for a referral to the Board of Selectmen.

C.Harris – We made an exception because it was only going to be one house. The reason for the Covenant was to be sure it remained only one house.

R.Leary – I voted for the determination of access based on one unit. Had they come before us with four units, I would have never voted for that. I felt I was misled.

T.Bott – I think it is appropriate to say that the Planning Board voted to endorse an ANR based on one unit and would not have voted for it with multiple units.

P.Kerfoot – Also, to add all of Charlotte’s points like the condition of the road. There are other claims in the application that are not appropriate. That this will add desirable diversity to the neighborhood; I think it will be a sore thumb in the neighborhood. Anything like this should be on public transportation; this is mile walk from public transportation and there’s no shopping or schools there.

R.Leary – You are adding the possibility of eight vehicles coming out of that road.

P.Kerfoot – It’s not a paved road.

McDaid, 51 Lewis Neck Road – There is an easement; we are holders of the easement. How will private electric lines be handled by the trucks? Where will trash be collected? How will the road be impacted by more cars? There’s no drainage. Who will maintain the road?

Frank Zuccarello – Initially the lot was deemed an unbuildable lot. How do you build four houses on that one acre? Troy Fender – When we purchased our property, we were told the land was unbuildable. We later learned the Planning Board gave the Housing Trust permission to build one house on an acre of land. We were ok with this decision. I reached out to Falmouth Housing Trust to see if they would help contribute $5,000 to help pave the road. All the other neighbors have or will be contributing $5,000 each towards paving and proper drainage. I was later told that Falmouth Housing Trust would be building four houses instead of one and they would only contribute towards paving if I would not oppose this change. Fender Properties is not in favor of this decision to build four houses on one acre of land.

C.Harris – This is a good opportunity to remind the Board of Selectmen where we want affordable housing sited. This is not a desirable location for affordable housing. It doesn’t meet the safety requirements.

J.Druley – I think the letter to the Selectmen should simply state that the Planning Board does not support this 40B without a release of the Covenant.
P.Kerfoot – Iree has researched the issue and noted that since the Covenant was written with the Town as the holder, she believed that even though it was written and signed by the Planning Board that the Select Board would be the body to release the covenant. Tom and Frank have a different take on it. Let’s say it’s determined that the Covenant cannot be dissolved by the Planning Board and it can only be the Selectmen that can dissolve it, I think we should opt to have more definitive comments as to the reasons the Covenant exists and the reasons so many of us have problems with this.

J.Druley – I would prefer if the referral to the Selectmen is negative but that we are not all in 100 per cent agreement. I am very much in support of the four homes because I know the road would get improved.

J.Fox – I feel we were misled on the access.

P.Dreyer – I think if we send a non-specific letter to the Board of Selectmen, it will give the impression that the Planning Board is not in support of affordable housing; that’s not the case. I think we have some very real concerns for this project. I’m not supportive of having four houses on that lot.

C.Harris – There is a bait and switch feeling here. I don’t feel there should be four houses here.

P.Harting-Barrat – I don’t think this is the best place for affordable housing. Four houses on that lot is the antithesis of the character.

R.Leary – I am not in favor of releasing the Covenant. They should find somewhere else to build affordable housing. There were a lot of untrue things in the application.

P.Kerfoot – I think the letter to the Selectmen can say that it was six in favor and one opposition to the referral and would add that the Planning Board as a body is very in favor of affordable housing in Falmouth.

**64 Crowell Rd - Follow-up on Determination of Access request**

T.Bott – Presently Crowell Road is an approved subdivision way and there last approval was by the Planning Board about 10 years ago that allowed 63 Crowell Road be created as a lot provided the developer made the road 16 feet wide and included gravel as appropriate for that individual lot. Bringing the road beyond 63 Crowell is a subdivision requirement. To create additional house lots beyond that, there would need to be additional improvements beyond that point. This brings about 100 feet long on a dead-end road with no secondary means of access. It doesn’t comport with our subdivision regulations or our determination of access policy. The Planning Board would need to grant a significant number of waivers to approve this.

**Expedited permitting – Covid related outdoor seating**

T.Bott – Creating a new zoning article is likely not an option in the short term. The Governor is allowing the select board to essentially override some of the zoning provisions in the short term. We are working with Town Council on drafting that particular language. This provision would apply to all restaurants in Falmouth.

P.Dreyer – I would be concerned with this item as we are addressing a limited number of restaurants and not addressing the other merchants nor considering other parts of Town. I suggest that we should be cautious about untended consequences.

**ANNOUNCEMENTS:**

P.Harting-Barratt – The corner of Jones Road and Palmer Ave at the site of the gas station is a dangerous hazard.

P.Dreyer – The Appeals Court addressed the proposed 40 B development on Lantern Lane project and has referred this back to the Zoning Board of Appeals.

J.Druley – Should we vote on officers for the coming year?

P.Kerfoot – The reorganization of the Board is on the agenda for next week.

**NEXT MEETING:** June 9, 2020

Meeting adjourned at 7:59 pm.

Respectfully Submitted,
Paul Dreyer, Clerk/Secretary
Sheri Theroux, Recording Secretary
APPLICATION FOR ENDORSEMENT
OF PLAN THOUGHT NOT TO REQUIRE APPROVAL

File one (1) completed application with the Planning Board and one (1) copy with Town Clerk, in accordance with the requirements of Section 81P and 81T of Chapter 41 of the General Laws of the Commonwealth of Massachusetts.

Falmouth, MA. May 27, 2020

To the Planning Board:

The undersigned, believing that the accompanying plan of land in the Town of Falmouth does not constitute a subdivision within the meaning of the Subdivision Control Law, hereewith submits said plan to the Planning Board for a determination and endorsement that Planning Board approval under the Subdivision Control Law is not required.

1. Title of plan (include date and scale) Plan of Land at 104 Hayway Prepared for Gregory Clancy, East Falmouth, MA, May 26, 2020, Scale: 1" = 40'

2. Name of applicant Gregory Clancy

Address 104 Hayway, East Falmouth, MA 02536


Address 164 Katharine Lee Bates Road, Falmouth, MA 02540

4. For title see deed recorded in Barnstable County Registry of Deeds Book Bk: 28392 Page: 136 or Certificate of Title No

5. Location and description of property: 2.378 acre piece of land with one house (104 Hayway Road) which fronts on Hayway Road and 1.339 acre piece of land with one house (108 Hayway Road).

6. State simply the reason for the plan: The purpose of this plan is to exchange equal areas of land between Lots 4 and 5.

7. Map, section and parcel number 20 02 016 004

Signature of applicant (or agent) [Signature]

NOTE: This application is to be accompanied by an ink drawing on tracing cloth and three (3) prints thereof, of the size and containing the data required by the Falmouth Subdivision Regulations.