

**Zoning Board of Appeals  
Virtual Meeting – Town Hall  
Minutes of June 11, 2020 at 6:00PM  
Zoning Administrator: Noreen Stockman  
Present: Hurrie, Dugan, Van Keuren, Barry, Morse, Foreman, Zylinksi**

**Public meeting June 11, 2020**

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**Public Comment – none**

Dugan made a motion to take items out of order and hear all new hearings first out of order. Zylinksi seconded the motion. Motion carried 6-0.

All in favor.

Roll call Vote - Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinksi – Aye, Morse – Aye, Barry - Aye

Chairman Hurrie made the following statement to clarify the vote of 213 North Falmouth Highway during the open meeting session of the Zoning Board’s May 28<sup>th</sup> meeting:

Hurrie – At its meeting on May 28, 2020, the Zoning Board of Appeals voted on insubstantial changes proposed as part of a settlement agreement, to amend the 213 North Falmouth Highway Comprehensive Permit #020-19. The vote was 3-2, with 3 in favor, and 2 opposed. The Board inadvertently announced that the motion did not carry. However, for Comprehensive Permits, the vote required to carry is a simple majority. Therefore, the motion made to approve the insubstantial changes to the Comprehensive Permit, including allowing construction of eight duplex dwellings (or 16 total units), passed. The document recording this vote has been filed with the Town Clerk.

This statement shall serve to correct the Minutes recorded for May 28, 2020.

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**#030-20 Muse, 14 Benham Road, Falmouth** – requesting a special permit to allow a tent for outdoor seating

Voting members: Hurrie, Foreman, Dugan, Van Keuren, Zylinski

Dugan noted that a request was made by the Applicant to continue the hearing to July 9, 2020.

Dugan made a motion to continue the hearing to July 9, 2020. Morse seconded the motion. Motion carried 5-0.

Roll call vote :Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Morse – Aye, Barry – Aye

All in favor.

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**#028-20 Mahoney Trustees, 2 Elysian Ave, Falmouth** – requesting a special permit to remove existing covered entry and construct a porch addition.

Voting members: Hurrie, Foreman, Dugan, Van Keuren, Zylinksi

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

Planning – no comment

Fire – no comment

ConCom – Negative RDA was approved, catch basin and drywells to be installed; they were proposed under a previous filing but never installed

Assessors – no comment

Engineering – standard comments, post address to comply with section 99-1, recommendation for project to follow "Soil Erosion and Sediment Control Standard Conditions"

Correspondence - none

Tim Santos, Holmes and McGrath, project engineer – The existing single family dwelling is preexisting nonconforming to the side line at 6' to the north and 4.9' to the south. The applicant is proposing to remove the existing covered porch and construct a new porch. We are applying for a special permit under sections 240-3 C. for setbacks and 240-69 E. for lot coverage. We've submitted a lot coverage worksheet and out of the 12 neighboring properties; this property is in the lower half of the list, and we believe it fits in with the neighborhood. 19.5%, proposing to increase to 24.8%. The neighborhood range for lot coverage is 22.5 to 46.2%. This house is at the ridge height is 29.6', with the proposed porch being 10.6'. The new porch will come across the front of the house. The proposed porch is approximately 30', 5" long.

Board Discussions:

Zylinksi – That's a new sewer connection, the structure that holds the grinder pump is directly under that deck, how will it be serviced?

Santos – We spoke with Amy Lowell and an access hatch will be built over that area, there will be no sono tubes and the lines will be protected. She was satisfied with our plan.

Hurrie – It looks as if there is an overhang for the proposed porch roof?

Santos – The overhang is included in the setbacks; the patio underneath is smaller. I think the 3D picture distorts perception a little.

Public Comment - None

Dugan made a motion to close the hearing. Foreman seconded the motion. Motion carried 5-0.

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Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Van Keuren - Aye

Dugan made a motion to grant application #028-20. Foreman seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Van Keuren – Aye

**Findings:**

- 1) Meets 240-3 C., 240-69 E., 240-68D. and 240-216
- 2) Nonconforming to south and north property lines
- 3) Applicant is replacing existing entry with porch addition
- 4) Will not encroach into setbacks
- 5) Setbacks are measured to overhang
- 6) Existing lot coverage 19.5% proposed 24.8%, below other properties in surrounding area
- 7) Drywells proposed
- 8) Within LPPSA
- 9) Within AE13 flood zone
- 10) Zoned Residential C
- 11) Connected to town sewer; testimony given that there will be a hatch access to grinder pump; wastewater was satisfied with plans
- 12) ConCom issued negative RDA; catch basins and drywells to be installed

**Conditions:**

- 1) Per plans
- 2) Setbacks to roof from overhang
- 3) Access for Wastewater Division for grinder pump
- 4) Comply with Engineering's comments: must comply with Town's Erosion and Sediment Control requirements, to include the Town's catch basin; install drywell. No stormwater runoff from Premises
- 5) One-way Street, if traffic needs to be blocked arrange with police
- 6) Keep materials/equipment on site
- 7) Construction hours Mon-Sat, 7 a.m. to 7 p.m. No Sundays or holidays
- 8) Post address prior to final sign off by the Building Department

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Morse – Aye, Barry - Aye

All in favor.

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**#019-20 Mannix / Shields, 10 Crown Avenue, Falmouth** – requesting a special permit to raze and reconstruct the existing cottage

Voting members: Hurrie, Foreman, Dugan, Zylinski, Van Keuren

Kevin Klauer, Attorney for applicants – The lot consists of 4,287s/f, with 2 dwellings on site; the front dwelling is a 3-bedroom Victorian home and in the rear is a 2-bedroom detached cottage. The applicants are looking to rebuild the cottage to look like the main Victorian house. The proposed reconstruction of the cottage is to a single bedroom structure and no new nonconformity will be created. We've submitted an additional site plan showing the relocation of the cobblestone apron and fence which has been moved onto the property. The ac unit will not be on a concrete pad, but will hang from the building. We've also submitted a passing Title 5 report, showing a bedroom count of 6, and a septic sketch plan if the system were to fail in the future. We submitted a sketch plan showing new parking spaces that can accommodate 3 cars. I received notice that we would not be able to modify the 1988 permit for this application. We are unable to establish that this cottage existed prior to May 19, 1959, because this was part of the Oak Grove Hotel, and was not a residential use. After speaking to my clients, they agreed to remove the cooking facility from the cottage, so it would not be considered a second dwelling, which would allow us to apply under 240-3 C. Revised floor plans showing the stove removed were submitted. There will be minor improvements made to the property, but they are improvements nonetheless. Out of the 45 properties that are in our lot coverage analysis, 21 had a larger gross building area, 25 had larger footprints and 23 had a larger lot coverage by structure percentage. This project is in line with the surrounding properties. Klauer stated that this project meets the criteria of 240-216.

Board Discussions –

Foreman – You're tearing down the old cottage, correct?

Klauer – Yes.

Foreman – Why not put a cottage sized addition on the existing building?

Jill Neubauer, project architect – Because there was already an existing cottage. We learned the foundation was a mess and the cottage was in worse shape than we thought. The intention was to tear down and build new. We didn't want to add onto the existing house; it's designed well. We thought a cottage was sweeter.

Foreman – You may have got around some zoning issues if you built off the main structure.

Dugan – The main house has 4 bedrooms and the cottage will have 1?

Klauer – Yes.

Dugan – You relocated the cobblestones and fencing out of the town roadway. When I was by the property, they are parking 2 cars next to each other, so whatever car is on the side is still in the town layout. Is there a way to mark the spaces on site so people know where the Town layout is?

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Klauer – That’s a possibility when they are going through construction, I’m sure they’ll have bounds placed.

Dugan – Their parking would be what they have now; are they suggesting any more spaces?

Klauer – No, but however they want to configure the parking on the lot is fine, as long as it’s on their property.

Dugan - Would the septic need a variance if it were to fail?

Tim Santos – Yes, it would require approval from the Board of Health.

Zylinksi – The area is so constricted and the neighbors would be affected, was there any thought to doing everything at once?

Santos – The Title 5 report shows a good system, with no signs of hydraulic failure. So most homeowners aren’t going to replace a system if nothing was wrong with it. If there was an issue, I would have definitely brought it up to the clients, and suggested that everything be done at once.

Foreman made a motion to close the hearing. Dugan seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinksi – Aye, Morse – Aye, Barry – Aye

Dugan made a motion to grant application #019-20. Zylinksi seconded the motion. Motion carried 5-0.

Dugan – I think we need to get a draft of the decision. I would suggest having the administrator draft a positive decision to be reviewed at the next meeting.

**Proposed findings:**

- Cooking facilities will be removed, not considered a 2<sup>nd</sup> dwelling
- Fencing, cobblestones on town land, will need to be relocated
- Cottage will be 1 bedroom and will comply with the septic system
- Submitted Title 5 report
- Future septic replacement would need variance through BOH
- List existing and proposed setbacks and lot coverage
- Reference previous decision
- Include comments from Engineering Department
- Area is limited for parking and construction
- Originally modifying existing special permit; changed to new special permit

**Proposed conditions:**

- 1 bedroom cottage
- Cottage is an accessory use to main house
- No cooking facilities in cottage
- Driveways, fencing anything in town layout need to be relocated onto property

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- Hours of construction
- Construction fencing
- Narrow roadway may need to contact police department to help with traffic flow
- Subject to drywells
- Not a multi-family use

Stockman – We will have a draft Decision for review for June 25, 2020.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinksi – Aye, Morse – Aye, Barry – Aye

All in favor.

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

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

Kevin Klauer, Attorney for applicants' – the applicants are looking to raze and rebuild the dwelling. Because of the flood zone standards, the applicant has no choice but to rebuild, and elevate 2' above the flood level. The 3' contour line will remain unchanged. There will be mitigation plantings per the Conservation Commission. We submitted solar studies, images taken from the dwelling, and photos of nearby dwellings with ridge heights. It's a proposal that is in line with the surrounding properties. The concerns that have been brought up by the abutter are solely her concerns; she doesn't have a view easement either. She will still have considerable views. We submitted a lot comparison worksheet. Of the 26 dwellings, 8 were larger. Similarly there was an approval at the last zoning meeting for 335 Shore Street, with the same proposed height. I believe we addressed the concerns that were brought up.

Attorney Edward Kirk, representative for Ms. Arcisz (abutter - Seagull Lane)

Dugan made a motion to allow Attorney Kirk 5 minutes to present. Morse seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinksi – Aye, Morse – Aye, Barry - Aye

Kirk – We aren't against others having water views. The lot is very small, and the neighborhood consist of smaller lots, with smaller structures than what's proposed. The question is whether or not it's substantially more detrimental. There is a further encroachment, even though it doesn't go beyond the setback. There are different circumstances and facts on each of these properties. I would say it would be more detrimental. My client is not just standing up for herself; she's opposed another structure that was to be elevated.

Board Discussions –

Hurrie – The height restrictions that you are referring are in the deeds?

Kirk – Correct.

Hurrie – Have they expired?

Kirk – I believe they have. We are saying there is a legally binding prohibition.

Hurrie – To Attorney Kirk's points, he mentioned the difference between Seagull Lane and Surf Drive, are you aware of the flood plains?

Klauer – There was never a deed restriction on this property. It's in a VE zone through the middle of Ms. Arcisz's property down to Surf Drive. This property was part of a larger lot that was subdivided.

Dugan – What was the purpose of the deed restrictions?

Klauer – Ms. Arcisz had a house that was taller at the time and it protected her view.



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Kirk – it was designed to protect the value of the lots. To have an unobstructed view was a huge selling point.

Morse – Is it fair to say that the common scheme predated flood regulations?

Kirk – That’s fair to say.

Dugan – I understand the needs of the flood zone; my concerns haven’t changed under 240-216. What stands out is it is out of character and it’s the houses that have been elevated on Surf Drive. Mr. Kirk mentioned the relocation of the nonconformity, and bringing it closer to the water. Access to this house is difficult. My worry is if all of the properties go up to the maximum in bulk, the character is changing. It would be a no for me.

Klauer – The house along the water’s edge are much higher than the surrounding houses. This house is not changing the character, it is in keeping with the neighborhood. We aren’t coming closer to the river; we are maintaining the 9’ setback. It’s coming further south, but not closer.

Greg Soorinian, project architect - We did a square footage analysis of how much of the building was previously within that setback versus the proposed. It either matched the same square footage or it was less than what is being presented.

Dugan – When you drive into the neighborhood, it looks like it’s bordered by a wall of structures and doesn’t seem like it’s incorporated with the surrounding properties. It has a huge effect of the neighborhood character. I don’t think it fits.

Klauer – The houses along Mill Road are smaller, and the ones along the river are larger.

Dugan – If your drive there from Mill Road, house numbers 183 and 185 Surf Drive seem like they are in character.

Klauer – I don’t think the addition of this structure changes the character; it’s surrounded by 3 elevated structures.

Van Keuren – I would go for it. It’s inevitable.

Barry – I would be against it.

Morse – I would be in favor of approval. The FEMA regulations drive my opinion.

Public comment-

Frank Stepien 185 Surf Drive -All houses on Surf Drive are going up; the homes behind them are one-story. The character of the area is changing because of the flood zones.

Hurrie – The Board has struggled with these regulations. It seems like these application ask for the maximum.

Dugan – I would be more in favor if a single story house went up.

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Hurrie – Was there any consideration to decreasing the size?

Klauer – This will be the applicant’s permanent home; it’s not out of line with the neighborhood. Many homes near this property have been elevated. The cost doesn’t work to only go 1-story. Between the construction cost and the value of the property, they want to build a house that works for them and we want them to meet flood zone requirements.

Hurrie – I am sympathetic to the FEMA regulations. If the project was scaled down with the mass I would be in favor of that.

Klauer – We submitted a lot comparison worksheet and there are a number of buildings that have a larger gross building area.

Dugan – I’m stuck when you start going over that one story. I don’t know what a story and a half would look like. They can see what they can do to scale it down. It might fit better into the area. You have to look at the whole neighborhood, not just from Surf Drive.

Barry – What is before us is what I’m basing my comments on. If I were to vote now, it would be a no.

Dugan made a motion to continue to July 9, 2020. Morse seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinksi – Aye, Morse – Aye, Barry – Aye

All in favor.

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**029-20 Gore, Trustees, 530 Woods Hole Road, Woods Hole** – requesting a special permit to construct an addition

Voting Members: Hurrie, Foreman, Dugan, Zylinksi, Van Keuren

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

Health – No issues with the Health Department

ConCom – no comment, outside of ConCom's jurisdiction

Planning - no comment

Water – Property currently has a ¾ inch copper service installed in 1935. No indication that proposed project impacts the water service to the property.

Fire – no comment

Assessors – no comment

Engineering – standard comments; recommendation to add drywells or other stormwater infiltration measure for the new roof area at a minimum

Correspondence – 1 letter with comments

Kevin Klauer, Attorney for applicants – The applicants are seeking to construct an addition on the easterly side of the dwelling. The property is 11,420 s/f located within a Residential C zoning district. The existing dwelling is 2-stories, with 3 bedrooms and a footprint of 1,450 S/f. The property is nonconforming to the front yard setback being 13.7', and has a ridge height of 29'. The addition will expand the living area with a deck, and new set of stairs, with a proposed height of 14'. The proposed lot coverage is 14.6%, well below the 20%. Klauer stated this project meets the criteria of 240-216.

Board Discussions –

Dugan – Will the applicants be amenable to put a screening in where the stairs will be?

Klauer – I don't know; my understanding is that the site is well wooded. I'd rather not have it as a condition, but I will suggest they speak to their neighbor.

Hurrie – You will be able to keep construction vehicles on site?

Klauer – Yes.

Public Comment –

John Gore, property owner – Yes, we will want to screen the stairs .There are bushes there now and we will add evergreens.

Foreman made a motion to close the hearing. Zylinksi seconded the motion. Motion carried 5-0.

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Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Morse – Aye, Barry - Aye

Dugan made a motion to grant application #029-20. Zylinski seconded the motion. Motion carried 5-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Morse – Aye, Barry – Aye

**Findings:**

- 1) Meets 240-3 C.
- 2) Nonconforming to front yard setback at 13.7'
- 3) No new nonconformities will be created
- 4) Proposed lot coverage 14.6%
- 5) Applicant stated that evergreens will be planted to screen stairs

**Conditions:**

- 1) Per plans
- 2) Drywells for roof area
- 3) Construction equipment and materials to be kept on site
- 4) Modest addition

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Morse – Aye, Barry - Aye

All in favor.

Dugan made a motion to extend the meeting to 9:45. Van Keuren seconded the motion. Motion carried 7-0.

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

All in favor.

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**#078-19 Buzzards Bay Development, 40 Shore Street, Falmouth** – requesting a Comprehensive Permit to renovate the existing dwelling and construct 7 additional single-family dwellings; 2 will be affordable  
Morse recused himself.

Hurrie – We had asked for an extension of time, do you happen to have that?

Klauer – Yes, it's signed; I haven't had a chance to send it over.

Dugan made a motion to extend the meeting to 9:45 PM. Van Keuren seconded the motion. Motion carried 6-0.

Roll Call Vote: Hurrie – Aye, Foreman – Aye, Dugan – Aye, Zylinski – Aye, Van Keuren - Aye

All in favor.

Klauer – We are seeking a Comprehensive Permit under chapter 40B. We are proposing 8 units (5-4 bedrooms and 3-3 bedrooms). Following the last meeting, we submitted a complete set of architectural plans. We added a 4<sup>th</sup> bedroom to unit 3, corrected the cover sheet that referred to the total square footage, removed a 2-car garage for building #7. One 2- car garage still remains at building #5. We've made a number of changes to address the Board's concerns. We've relocated the driveway, reduced the number of patios, we've modified and reduced the parking court. Letters have been submitted to the Engineering Department and the Water Department addressing their comments. What we are proposing is well below a reasonable return. Conditions that lower the return make the project uneconomic. At the April 9<sup>th</sup> meeting, we discussed at length, why a 4<sup>th</sup> bedroom was added to building number 3. The Town is short of their housing inventory and shouldn't be turning these proposals away. This is a good project, and has received support from the community and abutters; we hope that what was submitted reflects what the Board is looking for. There has been no one in opposition throughout this process.

Board Discussion –

Dugan – I want to make one statement for clarification. There was an intense discussion at the last hearing regarding the addition of the 4<sup>th</sup> bedroom; it was said that I had requested the change to add this. I have reviewed all of the Minutes, and never requested that a 4<sup>th</sup> bedroom be added. I want to make sure that the applicant and public is clear on that. The information given at the last meeting was incorrect.

Klauer – I don't want to put words in your mouth; my interpretation was different than what you intended. Building 1 has got larger, including adding a garage, building 2 is a 1-car garage with 3 bedrooms, building 3 is where the 4<sup>th</sup> bedroom was added, building 4 is a 1-car garage and 3 bedrooms, building 5 is a 4 bedroom with a 2 car garage, and that is the only 2 car garage. Units 6, 7, 8 share a parking court with single car garages, 6 & 7 are 4 bedrooms and 8 is a 3 bedroom.

Hurrie – Did you designate affordable units yet?

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Klauer – We are proposing 1 and 3 as the affordable units; MA housing does retain some right to designate.

Dugan - How does the square footages compare to the market rate units?

Klauer – Unit 1 is 1,700s/f and 2,300s/f for unit 3. The market rate units go up to 2,600s/f. There was square footage added to both units 1 and 3.

Dugan – Was there square footage added to any other buildings?

Klauer – No.

Dugan made a motion to extend the meeting to 10:00. Van Keuren seconded the motion. Motion carried 6-0.

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

All in favor.

Dugan – I’ve seen the revised plans, my comments on the garages haven’t changed. I think they should all have single car garages. I’m not in complete agreement with the letter submitted from the realtor. I would suggest to close the hearing and discuss at another meeting and go forward from there.

Van Keuren – I feel the same way.

Barry – I’m not willing at this point to discuss it.

Dugan – I would propose we close the hearing tonight and continue to the next date for a full discussion, and at the end of the discussion we decide how to go forward. I think we’ve got all the information we are going to get at this point. There’s been a lot of back and forth.

Dugan made a motion to close the hearing. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.

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

Dugan made a motion to discuss and review the project on July 2, 2020. Van Keuren seconded the motion. Motion carried 4-0.

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

All in favor.

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**Open Meeting:**

- 1) Vote Minutes of May 14,2020 and May 28,2020  
Dugan made a motion to approve minutes of May 14, 2020. Van Keuren seconded the motion.  
Motion carried 7-0.  
May 28, 2020 – tabled
- 2) Board Discussion – Management of abutter participation  
Stockman – We did received a new 40B filing which the staff will discuss at the June 17<sup>th</sup> land use meeting and the Board will open on July 9<sup>th</sup>.
- 3) Board Updates – none
- 4) Future Agenda Items – Next meeting June 25, 2020 at 6:30PM

Meeting adjourned 10:00PM

Respectfully submitted,

Ashley E. DeMello

Office Assistant

Board of Appeals