

**Zoning Board of Appeals
Virtual Meeting – Town Hall
-Minutes of July 23, 2020 at 6:30PM**

Zoning Administrator: Noreen Stockman

Present: Hurrie, Dugan, Van Keuren, Barry, Morse, Foreman, Zylinski

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

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

All votes of the Board were taken by roll call.

Public Comment – none

RECEIVED
AUG 21, 2020 PM 4:01
TOWN CLERK

#031-20 Ahern, 27 Fresh River Lane, Falmouth – requesting a special permit to raze and reconstruct the existing single family dwelling; increasing lot coverage by structures

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

Kevin Klauer, attorney for Applicants' – The applicants are seeking to raze and rebuild the existing nonconforming house. The lot is just under 10,000s/f, located in the Single Residence C zoning district and within an AE12 flood zone. The existing dwelling is 1.5 stories with 4 bedrooms, and a large deck and shed. The footprint is about 2,000 s/f, and has a ridge height of 21'. The property is nonconforming to the front yard setback to Fresh River Lane at 19.1' and Stafford Road at 22.4'; the shed is nonconforming to the side and rear setbacks, and the lot coverage by structures is 20.2%. The applicants have owned the property for 20 years, and are seeking to make upgrades and improvements for their future full time residence. Because the property is located within the flood zone, the house will have to be raised to at least elevation 13. The new habitable space will be about 8' above grade and the space below will be used as a garage. The highest portion of the roof deck will be 22.3'. Four bedrooms are allowed as the property is sewerred. The shed will be removed, and both front yard setbacks will be improved to conform. The revised plans that were submitted show the fence being removed out of the Town layout, the driveway will be paved, and the total lot coverage has been updated to 27%. Klauer stated the proposed project meets the standards of 240-216.

Board Discussion –

Dugan – On the referrals Amy Lowell had sent in a referral and had a concern about bedrooms, and then amended her referral to say there is no variance needed. I know the plans show 4 bedrooms; is that what we are going on?

Klauer – I counted 4 because of the office. Ms. Lowell was saying that it doesn't meet the minimum square footage, so it wouldn't be considered a bedroom. If it's their position that it's only 3 bedrooms with 2 smaller rooms, we are fine with that.

Zylinski – Will the outdoor shower be tied into the French drain?

Klauer – It can be if needed, but I'm not sure.

Public Comment – none

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

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

Dugan made a motion to approved application #031-20. Zylinski seconded the motion. Motion carried 5-0.

Findings:

- 1) Meets criteria of 240-69 E and 240-216
- 2) Not more detrimental
- 3) In keeping with the area
- 4) Located within an AE12 flood zone, will be at elevation 13
- 5) New structure will comply with all setbacks
- 6) Proposed lot coverage by structures will be 20.1%
- 7) Updated plan reflects shed removed and fence removed from town layout
- 8) Application shows a 4 bedroom, but considered a 3 bedroom per Wastewater
- 9) Connected to Town sewer
- 10) Any increase in bedrooms beyond 4 would need a variance
- 11) Lot coverage worksheet submitted
- 12) Proposed ridge height will be 22'3
- 13) Space below home is garage space
- 14) Driveway will be asphalt

Conditions:

- 1) 3 bedrooms
- 2) Per plans
- 3) Proposed ridge height - 22'3
- 4) Split rail fence to be removed from town road layout
- 5) Shed will be removed per plans
- 6) Comply with engineering comments
- 7) Comply with Order of Conditions
- 8) Construction materials and vehicles kept on site
- 9) Construction hours 7A-7P Monday thru Saturday no Sundays or holidays

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

All in favor

Application #	Applicant Name:	Address:
031-20	Ahem	27 Fresh River Ln
Document (s) Submitted	Date Submitted:	Submitted By:
Application / Fee	5-13-20	Klauev
Authorization letter))
lot coverage calcs		
4 pictures Ex. book		
9 sets arch plans		
9 copies - site plan		
Request A buffer list		(OK)
Request refernees		(OK)
Email to Klauev	5-13-20	(OK)
Referral - Wastewater	5-14-20	(OK)
Referral - Assessors	5-14-20	(OK)
Referral - Fire	5-14-20	(OK)
Referral - planning	5-14-20	(OK)
Referral - ConCum	5-15-20	(OK)
Referral - H2o	5-18-20	(OK)
Referral - Eng.	5-18-20	(OK)
OOC - ConCum	6-8-20	(OK)
Revised Eng Comments	7-15-20	(OK)

Application #	Applicant Name:	Address:
037-20	Mare Ferreim	10 Terry Ln Ave Edk
Document (s) Submitted	Date Submitted:	Submitted By:
Application / see	6/11/20	Yung
(9) Copies plot plan	}	}
(9) Copies arch plan		
Photos Ex. dwelling		
Request abutters	6/11/20	SW
Request referrals	6/11/20	SW
Deed	6/11/20	SW
Email to Rep	6/11/20	SW
Referral - Fire	6/11/20	SW
Referral - Health	6/11/20	SW
Referral - Assessors	6/11/20	SW
Referral - Eng	6/12/20	SW
Referral - Con Com	6/12/20	SW
Referral - Planning	6/15/20	SW
Water Referral	6/15/20	SW
Rec'd cert. abutters list	6/16/20	SW
Email to Rep	7/21/20	SW
Email to Rep	8/3/20	SW
Recorded Covenant	8/12/20	SW
Pictures / plan of 2nd floor	8/14/20	SW
Old email from S. McGinnis	8/19/20	SW

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#037-20 Ferreira, 10 Terry Lou Avenue, East Falmouth – requesting a special permit to construct an addition to the existing single family dwelling

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

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

Health – Would prefer to see it more open to the main portion of the house, as its current configuration could work as a bedroom

Fire – The Fire Department has no issues with this project as drawn

Assessors – no comment

Engineering – standard comments; condition to add drywells or other stormwater infiltration measure for the new roof area

Conservation – no comment, outside Conservation jurisdiction

Planning - no comment

Water – Plan shows a contiguous structural addition. No new water service shown or required

Correspondence - none

Hurrie – It appears that the staking wasn't done prior to the hearing, could you address that?

Colin Young, representative for Applicant– I did receive the notice and didn't see that part. I wasn't aware that it wasn't staked. We did do it a couple of days ago; it was an oversight on my part.

Hurrie – We may want to see the property staked before coming to a decision.

Colin Young: It's a preexisting nonconforming property, the addition is less than 300's/f to make space for the owner and her family. It will not interfere with any setbacks. We've addressed the concerns of the Health Department; they suggested we take out the proposed 3' door and make it a 4' cased opening which we did and we've submitted updated plans.

Marie Ferreira, Owner – This would provide an extra area where I can work from home; we need the extra room to stretch out.

Young – The lot coverage is going from 15% to 17%, under the maximum allowed for structures. The total lot coverage will be increased from 35% to 37%, also below the allowable.

Board Discussion –

Dugan – It shows on the site plan that the patio encroaches onto the neighboring property; will you be moving that?

Ferreira – Yes, we will do that.

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Dugan – One of the prior decisions conditioned a deed restriction; was that ever filed?

Ferreira – Yes, it was.

Dugan – Can you send it to us before the next meeting?

Zylinski – In some of the prior decisions, there was a reference to a separate dwelling. Is this a single family dwelling?

Ferreira – Yes, I live there with my daughter and her family.

Zylinski – There was mention of an in-law apartment, what do you have for amenities?

Ferreira – It's a master suite that was approved. I have a bedroom and living area.

Zylinski – What is "open to below" mean on your floor plans?

Ferreira – I don't know; I looked at that, but I'm not sure what that means. There are 3 bedrooms upstairs and a bathroom. My suite is downstairs.

Zylinski – Are you going to be having 2 laundry rooms or are you moving it?

Ferreira – We plan on moving it because it's in a tight area.

Dugan – Is there a second floor on that section that exists?

Ferreira – There is only a stairway that leads to the loft.

Dugan – They need to show that there is a loft on the 2nd floor plan; that may be part of the confusion.

Hurrie – It is a modest project, we just want to see labeled staking and a revised plan.

Public Comment – none

Foreman made a motion to continue to August 20, 2020. Van Keuren seconded the motion. Motion carried 5-0.

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

All in favor.

Application #	Applicant Name:	Address:
038-20	Jinquein	71 Cornellum
Document (s) Submitted	Date Submitted:	Submitted By:
Application/see	6-12-20	SM
owner authorization	6-12-20)
(9) sets. arch plans	6-12-20	
(9) copies plot plan	6-12-20	
request abutters list	6-12-20	(M)
request referrals	6-12-20	(J)
Planning review	6-15-20	(M)
Planning Assessors	6-15-20	(M)
Referral - Fire Dept	6-15-20	(M)
Referral - Water	6-15-20	(M)
Revised plot plan	6-22-20	(M)
letter w/ no objections	7-6-20	(M) / Thomas
letter w/ no objections	7-6-20	(M) / Gonsalves
letter w/ no objections	7-6-20	(M) / Nydam
Referral - Eng	7-9-20	(M)
letter w/ no objections	7-13-20	(M)
letter w/ no objections	7/13/20	(M)
Referral - Eng.	7/14/20	(M)

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#038-20 Junqueira, 11 Cornell Way, Waquoit – requesting a special permit to construct a garage structure for more than 2 cars

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

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

Planning – no comment

Assessors – no comment

Fire – The Fire Department does not have any issues with the project as drawn.

Water – Project appears to be a barn with no water service or need. No impact to Water System.

Engineering – Standard comments, comments regarding driveway/apron, approval of a driveway permit, recommendation to add drywells or other stormwater infiltration measure for the new roof

Correspondence – 5 letters with no objections

Laura Moynihan, attorney for Applicants – This is an application is for a garage for more than 2 cars. The proposal is located within the Single Residence A zoning district. The lot coverage by structures is 13.65%, below the allowable 20%. The site plan was revised to address the apron coming into the property, as well as the drywells. The applicant took time and asked neighbors to sign letters with no objections. There is plenty of room for the garage in the area. This would be for residential use only; the family has cars that they would like to store in the garage. Moynihan stated the project meets the criteria of 240-216.

Board Discussion –

Foreman – Will there be heat?

Joao Junqueira, property owner – Yes.

Foreman – Any plumbing?

Junqueira – We are looking to store our boats and vehicles in the garage, so no plumbing.

Foreman – Is there a loft?

Junqueira – No.

Van Keuren – The shed on the left, will that be staying?

Junqueira – No, after the garage is built we don't need the shed.

Zylinski– On the trusses, what material are they made out of?

Junqueira – Wood.

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Public Comment – none

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

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

Dugan made a motion to approve application #038-20. Zylinski seconded the motion. Motion carried 5-0.

Findings:

- 1) Meets criteria of 240-23 G(1)(b) and 240-216
- 2) Located within the Single Residence A zoning district
- 3) Detached 3 bay garage for storage use only
- 4) Will be heated with no plumbing
- 5) Large sized lot, well wooded
- 6) Applicant met with neighbors and received letters / support
- 7) No other nonconformities
- 8) Proposed height will be 22'
- 9) Proposed lot coverage by structures will increase to 13.6%; total lot coverage will increase to 23.6%

Conditions:

- 1) Per plans:
- 2) Comply with engineering referral
- 3) No habitable space; storage use only
- 4) Heat will be installed but no plumbing

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

All in favor.

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Open Meeting

- 1) Vote minutes of July 2, 2020 and July 9, 2020

July 2, 2020 Van Keuren made a motion to approve minutes from July 2, 2020. Foreman seconded the motion. Motion carried 5-0

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

July 9, 2020 – Minutes tabled

All in favor.

- 2) #006-19 Locustfield, LLC, Beach Plum Path, (430 Locustfield Road), Hatchville – Request for insubstantial change to previously approved plans for Comprehensive Permit

Zylinski recused

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

Stockman – We have a letter from Laura Moynihan dated July 10, 2020 who indicated that the architectural plans that were presented and approved by the Board were correct; however the individual plot plans drawn for the building permits were slightly off. They are looking to have the plot plans approved, so they will match the architectural plans. There are no changes to the architectural plans that you saw and approved. This request is to accept the dimensional changes of the plot plan, so all plans will match. The architectural plans show a dimension of 26' x 34' and the plot plans showed 34' x 24', the garage on the architectural plans was shown as 15' x 22' and site plan was 16' x 22'. It's a minor modification; to compensate for any lot coverage change, they are reducing the size of the deck that was 12' x 16' and will now be 12' x 12'.

Dugan – Which is the correct dimension?

Stockman – The 26' x 34' is correct, but the plot plan that was submitted to the building department was incorrect. The garage was only supposed to be 15' wide. The decks will be reduced to 12' x 12' in order to compensate for the difference.

Dugan – Was this caught in the Building Department, and have any permits been issues yet?

Stockman – There have been a couple of permits issued. I'm not sure if they caught the discrepancy. When we reviewed the plans, we noticed that they did not match. We then received the corrected plot plans, but the building permits for a couple of houses had reportedly already been issued.

Dugan – When the Building Department gives out the permit, aren't they supposed to look at what was submitted?

Stockman – The plans should be reviewed; they come up to us as a "second check". We didn't get to sign off on the first few permits. We look at the plans that the Board approved to ensure that they match, before signing off. They now want to update the plans so they are correct, as they are part of the permanent record.

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Dugan – I want to make sure that the Building Department understands that building with Zoning Board of Appeals permitting should be coming to the ZBA for a sign off.

Stockman – There was also a condition regarding the water line – Condition #6 – Its apparently not something that needs to be done prior to the issuance of a building permit; I didn't know if it's language you want me to adjust?

Foreman – The Water Department didn't want to have a dead end and wanted it to be looped.

Stockman – That is a separate condition, and still being pursued; this is related to the timing of installation.

Dugan – Why was the Building Permit issued without conditions being checked? An oversight like that is big. I know they're under a lot of pressure, but these conditions have to be met.

Stockman – The fact that the hydrant flow test has to be done; I would think that they would ensure it gets done.

Dugan – If things don't get enforced and stay for years, we know what happens. Does this happen frequently?

Foreman – We put that in there to make sure there was adequate water pressure before the houses went in.

Foreman – With these changes, does it change net lot coverage?

Stockman – With the corrections that were made on the plot plan, and the reduction of the decks that would bring the lot coverage to what is was approved at.

Van Keuren – We asked to have the Water main continued out to the power line, I would think that should be put in before Building Permits are issued. It's very clear in the decision.

Foreman – You could change the language to say, "Prior to phase 2 construction, hydrant testing should be performed"; conditions 5 and 6 should be consistent.

Dugan – I would say that we go forward with approving the changes to the plan because that is all that is requested. We need to figure out how to notify the Building Department that conditions need to be adhered to. It seems like the permits that have been issued aren't in compliance with the permit.

Stockman – I was in touch with the Water Superintendent and he said he was satisfied with the work.

Dugan made a motion to approve the requested changes to the Comprehensive Permit #006-20.

Van Keuren seconded the motion.

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

- 3) #078-19 Buzzards Bay Development, LLC, 40 Shore Street, Falmouth – Review draft decision with possible vote (TH, RD, EVK, MB)

The Board discussed the proposed draft findings and conditions that were read into the record.

Dugan made a motion to continue to September 3, 2020. Van Keuren seconded the motion.

Motion carried 4-0.

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

All in favor.

- 4) Amend Board's 'Rules and Procedures' to require submission of decisions from all applicable Boards prior to filing for a hearing – vote anticipated
Hurrie – There will not be a vote on this, Noreen Stockman has reached out to Town Counsel, and they said it's not something we can do, as it would be in violation of the zoning By-Laws. We could take it to Town Meeting to have the By-Laws amended. There are many applications that get jointly filed with us and the Planning Board. Currently the applicant needs to file with both Boards within 7 days.
Dugan – Is there anything in the state laws that say that, or is it just local?
Stockman – It's community by community. In another community that I worked with, it was the preference of the ZBA that the applicant had completed its reviews with any other Boards prior to filing.
Foreman – I think we should be more specific if we are going to change the By-Law.
Stockman – I was hoping that the Board could amend its rules, but Town Counsel had looked into it. The by-laws say that applications for Planning and Zoning should be submitted essentially simultaneously. It would be ideal for the ZBA to reach out to the Planning Board on this matter.
Foreman- I'm happy to reach out to Pat Kerfoot.
Hurrie – Any updated on the by-law recodification?
Stockman – Nothing new; I think they are wrapping things up to get the revised version out to everyone for final comments.
- 5) Board Discussion – Management of abutter participation for Zoom hearings
- 6) Board Updates - none
- 7) Future Agenda Items – Next meeting August 20, 2020