

**FALMOUTH PLANNING BOARD AGENDA  
TUESDAY, NOVEMBER 3, 2015, 6:30 P.M.  
FALMOUTH TOWN HALL, COUNCIL CHAMBER**

**MEMBERS PRESENT:** Jay Chace; Bill Benzing; Jason Cole; Tom McKeon, Chris Hickey.

**MEMBERS ABSENT:** Rudy Israel

**STAFF PRESENT:** Ethan Croce; Lisa Sangillo

The meeting was called to order at 6:33 p.m.

**Item 1** Approval of minutes from the October 6, 2015 Planning Board meeting. Mr. McKeon motioned to approve the minutes. Mr. Hickey seconded. Minutes approved 4-1 (Mr. Cole abstained)

**ADMINISTRATIVE ACTION ITEMS:**

**Item 2** **Peter C. Anderson** - Request to vacate a private way named Moss Lane. Tax Sheet 180, Map-lot R08-012-001 & R08-012-002; Zoned FF, RCZO.

**Item 3** **Dale Bragg Builders, Inc.** – 20 Preservation Drive – Request for Subdivision Amendment for a lot line adjustment to Lots 2 and 3 in the Foreside Woods Subdivision. Tax Sheet 164. Map-lot U14-007-002. Zoned RA, RCZO.

**Item 4** **Baker Design Consultants** – 5 Robinson Way – Request for Shoreland Zone Permit to replace a shorefront retaining wall and associated improvements. Tax Sheet 330. Map-lot U05-006, Zoned RC, WVOD, RCZO, LR (Shoreland). **MOVED TO REGULAR AGENDA ITEMS**

**Item 5** **Baker Design Consultants** – 143 Foreside Road – Request for Shoreland Zone Permit for bridge and roadway improvements. Tax Sheet 240, Map-lot U10-003, Zoned RA, WVOD, RCZO, LR (Shoreland).

Mr. Benzing motioned to approved all administrative action items. Mr. McKeon seconded. All Administrative Action Items approved 5-0.

A gentleman from the audience, John Parker who lives adjacent to 5 Robinson Way, misunderstood the process and asked to comment on Item 4. He wanted to know if they incorporated his suggestions into the plans.

Mr. Chace asked Staff what the next step would be. Mr. Croce stated the next step would be to vote on reconsideration.

Mr. McKeon moved to reconsider Item #4's approval to allow discussion. Mr. Chase seconded. Reconsideration passed 5-0. Next Mr. McKeon motioned to move Item 4 from Administrative Action to the Regular Agenda Items. Mr. Benzing seconded. Approved 5-0.

**PUBLIC HEARING**

**Item 6** Proposed amendment to the Zoning Map to rezone the property located at 9 Lunt Road from RA to VCC.

Will Haskell, Gorrill Palmer, gave an overview of the Library Expansion project.

**PUBLIC COMMENTS:** Van Wilkerson, Blackstrap Road, asked why the reason was for the rezoning.

**PUBLIC COMMENTS CLOSED.**

Mr. Haskell answered Mr. Wilkerson's question by explaining that they felt it better to have the whole library parcel in one zone instead of two instead of the parcel being a split zone.

Mr. Hickey asked Mr. Croce what provisions the VCC zone made for buffering and screening. Mr. Croce stated that they contemplate higher density development with a denser buffer.

Mr. McKeon moved to recommend the zoning change proposed in Public Hearing Item 6. Mr. Hickey seconded. Recommendation passed 5-0.

**Item 7** Proposed amendment to revise the Retirement Community Overlay District's (RCOD) conceptual master plan, and to amend the Zoning Map to extend the RCOD to include the properties at 170, 172, and 174 Middle Road.

Chris Wasileski, Oceanview, gave an overview of their amendment.

**PUBLIC COMMENTS:** No public comments.

**PUBLIC COMMENTS CLOSED.**

Mr. Benzing felt it made a lot of sense. Mr. Chace is generally favorable. He explained he wanted to have the revised master plan show the sidewalk along Middle Road that Ocean View is required to construct. Mr. Wasileski pointed out where the sidewalk note is located. Mr. McKeon motioned to recommend this amendment. Mr. Benzing seconded. Recommendation passed 5-0.

**AGENDA ITEMS:**

**Item 4 Baker Design Consultants** – 5 Robinson Way – Request for Shoreland Zone Permit to replace a shorefront retaining wall and associated improvements. Tax Sheet 330. Map-lot U05-006, Zoned RC, WVOD, RCZO, LR (Shoreland).

Barney Baker, Baker Design Consultants, gave an overview of the above application. He stated that the retaining wall is failing and replacement is needed. They are removing the current wall and replacing it with a smaller one. In reference to Mr. Parker's concerns, Mr. Baker stated nothing on the Parkers property will be impacted. They are replanting a tree at the top of the slope where the tree will be removed.

**PUBLIC COMMENTS:** John Parker, abutter, said the plans adopted his suggestions and he has no problem with what they're doing. He doesn't understand why the oak has to be removed.

**PUBLIC COMMENTS CLOSED.**

Mr. McKeon asked Mr. Baker if the 8" oak that Mr. Parker was referring to could be preserved. Mr. Baker stated that the tree comes right down on the outer edge of the wall, and as soon as the concrete is removed, he cannot see how it can be saved. They do have a landscape plan to replace the tree and also will be revegetating the coastal slope.

Mr. McKeon motioned to approve the application. Mr. Benzing seconded. Approved 5-0.

**Item 8 Doten Properties, Inc.** – Tidewater Village Lot 4 – Request for Site Plan Review for a restaurant with outdoor dining on Lot TV-4 in Tidewater Village. Tax Sheet 320. Map-lot U52-006-001, Zoned TMPDD.

Mr. Croce gave an overview of the zoning ordinances and standards that apply to this item.

Michael Hayes, Grant Hayes Associates, gave an overview of the application. They did not give a full presentation, but went over the changes that they have made since the previous submittal. He talked about the screening that encloses the cooler and the recycling area where they replaced the 2x4s to 2x6s and anchored the wall. Charlotte Maloney talked about the landscape changes that included added shrubs that will be 8-10' tall. They also added an evergreen by the loading area, and added a lot more street trees, honey locusts and red maples. They are proposing to install a solid, short fence to screen the edge of the parking lot and screened dumpster as well. The transformer has also been moved to the northeast end of the parcel. There is also the addition of a path from Farm Gate Road into the parking lot.

Mr. Hayes stated that the freestanding sign was removed from the plans. The only signs they have are building mounted. They rearranged the parking lot configuration narrowing up the painted lines on the ADA spots. One of the Peer Reviewers asked why the painted sidewalks were labeled 5.33' and not 6'. Mr. Cudlitz stated that the Tidewater Design Guidelines stated they be 5.33'. Mr. Maloney stated they addressed the request for additional screening on the Farm Gate Road side of the parcel by adding the fence and additional street trees.

Bill Bray, Traffic Solutions, discussed the changes in the parking design. He discussed the on-street parking on Clearwater Drive, 30 parking spaces along that road. He described how the land would be prepared and readied for parking. He stated they have worked out a maintenance agreement with Public Works for maintaining those spaces as well as the other on-street spaces along Farm Gate Road. They realize they will need a final plan with details to be approved by staff as a condition of approval. They have laid out a parking plan for the TV 3 lot with signage for both the controlled and shared parking spaces. This plan has been reviewed and signed off on by all parties. They have updated the parking study that was included in the original submittal, and it has been reviewed by the Town's Peer Reviewer who has approved the plan.

Mr. Chace asked the Board if there were any clarifying comments. Mr. Chace asked Mr. Bray to outline the two items they would handle through conditions of approval. Mr. Bray stated that one of these items was sight distance and the other was that the signs match the same colors and style as Route One signs. He also stated that re-monumenting the site would be done after construction is finished.

Mr. Benzing asked for clarification from Mr. Croce on Page 6 of the staff notes stating that the minimum number of required spaces would be 53 and not 55. Mr. McKeon asked about the parking leases in TV3 with the language that the tenant provide license plate numbers and if they were using the same verbiage. Mr. Croce stated that the verbiage is still the same but there is now an addendum to the lease that provides for signage. Mr. Hayes stated that the Dotens were working on that issue, and they aren't present this evening. He doesn't have an answer to the question. Mr. McKeon stated that the lease verbiage places onerous conditions on the tenant and there is a concern

about the verbiage allows the Board to make a finding that the lease terms are “in perpetuity”. He asked if the plan included the nine parallel parking spaces on Farm Gate Road. Mr. Hayes stated it does.

**PUBLIC COMMENTS:** Tom Emery, from Foreside Architects and representing the Tidewater Homeowners Association stated they have no objection to the proposed use as a restaurant. He stated that the on street parallel parking is still in the plan. He discussed the issue of off street parking and the parallel parking on Farm Gate Road. He also felt the choke berry screening was not adequate. He feels that the Board should deny the construction of the 9 on street parallel parking spaces largely because they are not needed because there is more than enough parking to meet the restaurant’s needs.

Clifford Gilpin, 18 Heron Point Rd, stated that the goal of the homeowner’s association is to preserve the intent of the master development plan. He would like to see the 9 parallel parking spaces along Farm Gate Road removed.

Scott Russo, 10 Sherman Drive, supports the application on behalf of Casco Bay Hockey. He stated it would be helpful to have a walkway from the Arena entrance to Hat Trick Drive. He felt it would help with some of the parking issues that everyone is discussing and would encourage patrons of Family Ice to walk over to Rivalries.

Susan Gilpin, 18 Heron Point Drive, was concerned with the buffering along Farm Gate Road or lack thereof. She asked, on behalf of the neighborhood, that the Planning Board insist on proper buffering, similar to the buffering that is currently behind Family Ice and TV3.

Bob Isler, 22 Farm Gate Road, stated that the 9 parking spaces and the screening are the only stumbling blocks for the neighborhood. He urged the Planning Board to remove the 9 spaces.

Dave Costello, 1 Marigold Lane, agrees with what’s been said so far. He appreciated the fencing at the end of the parking lot. He feels the TV3 parking lot should be screened as well.

Jana Hutcherson, Farm Gate Road, wanted to know how patrons would know where to park.

Mark Burns, Foreside Architects, clarified the issues for the neighborhood which are the parking and screening. He feels the design team has been asked to look at these two issues and have failed to follow through. He asked that the Planning Board ask the design team to follow through with these two issues.

Lance Meader, Woods Road and owner of Rivalries, stated they were under the impression that they need the on-street parking spaces. He stated that their traffic engineer and the Town’s Peer Review traffic engineer encouraged these parallel parking spaces.

**PUBLIC COMMENTS CLOSED.**

Mr. Hickey discussed with the Board the requirements for parking spaces. He understood there to be a minimum of 53 parking spaces which would be the minimum required for approval. The Board was in agreement. Mr. Hickey also stated that Mr. Meader felt the 9 parking spaces were needed to meet the requirement, which Mr. Hickey felt that wasn’t the case. Mr. McKeon asked Mr. Croce for clarification that

even if the 9 parallel parking spaces were not constructed out of the travel way that people could park along that section of road anyway. Mr. Croce stated that was correct.

Mr. Chace asked if there was any consideration to berming the edge of the parking lot along the parallel parking. Ms. Maloney stated that berming of any height would require more buffer width than what is available.

Mr. McKeon asked Tom Emery if the concern was the 9 parking spaces or the buffering. Mr. Emery stated it was both the parking spaces themselves and the buffering. Mr. Emery referred to a letter submitted to the Town Council from Mr. Bateman.

Mr. Chace asked Mr. Croce to explain the Tidewater Master Plan and the items proposed to the Town Council. He explained the reasoning behind the master plan and the guidelines.

Mr. Chace presented an email from Aaron Svedlow in support of the project.

Mr. McKeon asked if they could do a condition of approval contingent on the applicant maintaining their off-site parking rights for the life of the project or the project approval lapses. Mr. Croce stated that the Board could require that condition. Mr. Chace asked if there was a purchase and sale agreement submitted for Bateman for the off-site TV3 parking spaces. Mr. Croce stated no, but that the applicant just today submitted an executed lease agreement.

Mr. Chace asked Mr. Bray about site distances on Hat Trick Drive. Mr. Bray feels there is no problem with sight distances on Hat Trick Drive, they just have not documented that on paper yet. He said he "was very comfortable stating that this meets the standard this evening.

Mr. Chace stated he feels that what the applicant has proposed has met the requirements of the ordinance. Mr. McKeon also agrees with Mr. Chace. He would like to see more buffering, but he thinks the application does meet the standards of the ordinance.

Mr. Hickey stated he's on the opposite side of the issue. He discussed the 500' provision for parking requirements. He feels the parking on Clearwater Drive could be upgraded in exchange for losing some of the other parking along Farm Gate Road.

Mr. McKeon asked about the waiver that was previously proposed. Mr. Croce stated that was no longer being requested or required.

Mr. Chace asked for clarification on the transformer location. Mr. Cudlitz stated that the electrical conduits are all underground. Mr. Hickey questioned the asphalt sidewalk between the parking lot driveways, which originally was shown as brick. Mr. Croce clarified for Mr. Hickey that the applicant showed it as brick last time but that this particular section is now proposed as asphalt.

Mr. Chace asked Mr. Croce if there were any outstanding items that were not addressed. Mr. Croce stated the peer reviewer had an issue with the steel bollards in the parking lot and some other misc. items. Lighting was another issue that wasn't addressed. Ms. Maloney addressed the bollard issue with the Board by pointing out that the bollards were reduced in size and colored to match the building.

Mr. Chace clarified with Ms. Maloney that she didn't know how much lighting would spill onto the Farm Gate sidewalk from the building lighting. Ms. Maloney suggested

that they have someone with a light meter measure the lighting along the walkway after the building is erected. She also stated that they were using the same lights as in TV3. Mr. Croce clarified that the lights they are proposing are parking lot lights and not pedestrian lights as required. Mr. Chace said there is an ordinance requirement to provide pedestrian scaled lighting along sidewalks. Mr. Chace also said adding pedestrian lighting will help coordinate the TV4 side of the road with the TV3 side of the road where there is lighting and that he would like to see pedestrian lighting added. The applicant agreed to work with staff to address lighting as a condition of approval.

Mr. McKeon asked about snow removal. Ms. Maloney showed on the plan where they moved the buffering in the parking lot to make room for snow removal. Mr. Hayes also stated that snow removal would be hauled off site by contractor if there is a need to.

The applicant stated that they are amenable to a condition of approval to provide a public easement over the Farm Gate Road sidewalk as recommended by staff.

Mr. McKeon asked if the staff comment regarding green space retention on the site was still a concern. Mr. Croce stated it was. Mr. Cudlitz stated that the green space calculation has been in his report since the beginning and is in the Planning Board material. Neither the Board nor staff could find that information as it did not seem to be included. Mr. McKeon stated that the sign stating “No parking along Farm Gate Road” needed to be removed as the Town hasn’t banned parking on Farm Gate Road.

Mr. Croce read the draft conditions of approval into the record. Mr. Hayes stated the applicants are satisfied with the proposed conditions of approval.

Mr. McKeon motioned to approve the application subject to the conditions of approval. Mr. Benzing seconded. Mr. Hickey stated that his vote opposing the application is because he thought they could have done a better job with the on-street parking issue and that his vote is not reflective of the good work the Planning Board and applicant have done. Approved 3-1 (Hickey opposed; Cole abstained).

#### **ADJOURNED UNTIL 9:23P**

**Item 9 TideSmart Realty, LLC** – 91 Johnson Road – Request for a subdivision amendment and Site Plan Review for the conversion of a residential structure to a commercial office. Tax Sheet 083, Map-lot U62-002. Zoned BP.

Mr. Croce provided a zoning context for the Board.

Tom Greer, Pinkham and Greer, gave an overview of the project. He went over the landscape plan for the Board’s information. They will be adding 3 feet of pavement along Johnson Road to help with erosion. They are asking for a waiver to narrow the driveway out to Johnson Road.

Mr. Hickey asked if the northerly lot line changed. Mr. Greer stated it did not.

**PUBLIC COMMENTS:** Peter McCormack, 4 Woodward Lane, handed out a list of questions to the Board. He mentioned a private agreement restricting commercial vehicular access into the site that was signed by numerous property owners and recorded at the Registry in 1987.

**PUBLIC COMMENTS CLOSED.**

Mr. Hickey asked for clarification regarding the sequence of past property ownership and lot divisions. Mr. Greer explained the background.

Scott Anderson, Attorney for Mr. Woods, discussed the issue with the Falmouth Foreside easement. He went over case law with the Board. He then discussed the 1987 access agreement.

Mr. Woods discussed the 1987 agreement with the Board. He also discussed the agreement he signed with Ms. Carlita Brown, one of the original signatories. He then discussed the history of the issues at hand and his application.

Mr. Chace reiterated to the audience the 10:30 rule on not taking up additional applications and asked the Board what their feelings were. The general consensus from the Board is they are not in favor of reviewing any new applications after 10:30 pm.

Mr. Chace began the discussion with the easement issue with Mr. Kennedy (Falmouth Foreside LLC). Mr. McKeon discussed the right, title, and interest portion of the issue and opinions from the Town attorney. He asked that the plan be amended, per staff's comment, to identify the book/page number of the easement for future reference. He feels the easement is not problematic from a right, title or interest issue in line with the Town Attorney's analysis. Mr. Hickey agrees with Mr. McKeon's findings. Mr. Chace confirmed with staff that as Mr. Cole is new, he would not participate in voting on this application.

Mr. Hickey discussed the language in the access agreement. Mr. McKeon is still concerned with this access agreement. Mr. Chace stated his understanding was that the agreement was just about the commercial access driveway; Mr. McKeon agreed.

As it was 10:30 p.m., they paused the discussion of **Item 9**, and Mr. Hickey moved to take up **Item 11** after 10:30p. No second. Motion failed.

The Item 9 discussion began again with Mr. Benzing stating that he felt he needed to go with the Town attorney's recommendations on leaning toward continuing to hear this application.

Mr. McKeon explained that the Board has to determine whether the application has "standing" or rights to make the application. The applicant's attorney discussed with the Board additional aspects of the agreement. Mr. McKeon said, while there are some instances where the Board can determine that an applicant does not have standing due to the existence of a private agreement, in this instance he believes the applicant does have standing.

Mr. Hickey motioned that TideSmart Realty does have standing to bring the application for Planning Board approval in spite of the two agreements brought to the Planning Board's attention being in the Planning Board's opinion. Mr. Benzing seconded. Motioned passed 4-1 (Cole abstained).

Mr. Chace asked for clarification on the proposed internal 10' gravel access driveway. He would like to see it reduced in width and be reassured that it would be used only for pedestrian access since it didn't meet driveway standards. Mr. McKeon also agreed. Mr. Chace would also like to see bollards or boulders to ensure no vehicular access. Mr. Woods addressed this issue with the Board. He stated that there were no outside

individuals other than employees who would use the driveway. The Board members continued the discussion regarding this pathway.

Mr. Hickey asked Mr. Croce what the minimum standards were for an internal road. Mr. Croce said 25 feet for two way vehicular circulation.

Mr. Woods asked if the Board would consider a 6-month condition regarding a traffic study with respect to the pedestrian pathway. Mr. Chace stated no because he didn't see compelling evidence that the standards were met.

Mr. McKeon stated that the only other issue he questioned was the landscaping not meeting the standard for every 100' of roadway. Mr. Croce stated they have met the standard along the residential district boundary but not the Johnson Road buffer. Mr. Greer stated they would like a waiver for that issue. Mr. McKeon asked if what was depicted on the plan were new plantings or existing. Mr. Greer stated it was a mixture of both.

The Board, applicant and their attorney discussed the landscape waiver and its appropriateness.

Mr. McKeon felt he was willing to approve the application subject to the conditions of approval and the waiver for the landscaping buffer. He stated that he thought the buffering requirement was waived for a previous applicant for the self storage facility for the same reason. Mr. Hickey thought that the Board did not grant that waiver. Mr. Chace said how the Board acted on another application has no bearing on the current application. Mr. Benzing is in favor of the tree buffer waiver.

Mr. Benzing motioned to approve the waiver for the buffering as shown on the applicant's plan. Mr. McKeon seconded. Approved 3-1 (Hickey opposed) (Cole abstained).

Mr. McKeon motioned to approve the waiver for the driveway width off Johnson Road to reduce the driveway width from 25' to 24'. Mr. Hickey seconded. Approved 4-0. (Cole abstained)

Mr. Chace was adamant that the internal driveway be restricted to pedestrian access only. His feeling is if it's there, people will drive across it. Mr. Hickey and Mr. McKeon agree that it should be for pedestrian access only and vehicle traffic may only be allowed for maintenance purposes.

Mr. Croce stated there was a photometric waiver still to be considered as well as two misc. lighting issues as well. Mr. Hickey stated he has no issue with the light pole base, which is represented as only 4" above ground level. He felt that changing the two lights to comply with the commercial use aspect of the building is not unreasonable. The applicant agreed to this condition.

Mr. Chace read a proposed draft condition related to the pedestrian access pathway:

*"A condition that the proposed gravel access drive as depicted on the plan set be used primarily for pedestrian access. Vehicular access is to be restricted by a moveable implement that may be designed to enable occasional access for maintenance vehicles only. Final design to be approved by staff."*

Mr. Hickey motioned to approve the photometric plan waiver. Mr. McKeon seconded. Approved 4-0 (Cole abstaining).

Mr. Croce read the draft conditions of approval into the record.

Mr. Woods stated he accepts the conditions of approval. Mr. Woods requested that Item #3 provide a 30 day grace period instead of tied to occupancy and explained his reasons for the request. Mr. Hickey stated he was comfortable with the language drafted by staff as is, as it's a Code Enforcement issue. Mr. Chace also stated he prefers the language as originally drafted by staff.

Mr. McKeon motioned to approve the application. Mr. Hickey seconded. Approved 4-0 (Cole abstaining).

**Item 10** ***(Item Tabled)*** **Belinda Marston** – Blackstrap Road – Request for Private Way approval to provide frontage and access to 2 lots. Tax Sheet 010, Map-lot R08-064, Zoned FF, RCZO.

**Item 11** **Charles Harriman** – 98 Field Road – Request for Pre-Application Sketch Plan Review for a 4-lot subdivision. Tax Sheet 210, Map-lot R03-076-A, Zoned F, RCZO.  
**ITEM TABLED TO DECEMBER AGENDA.**

**Meeting adjourned 11:49 p.m.**