

Zoning Board of Appeals Decisions Decisions for: 09-04-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 40-14

APPLICANT: WALD MANAGEMENT, INC. of Falmouth, MA

OWNER: Florence Richardson c/o Peter Richardson of Falmouth, MA

DEED/CERTIFICATE: Book 775 / Page 287

SUBJECT PROPERTY: 26 Elm Arch Way, Falmouth, Massachusetts
Map 47A, Section 14, Parcel 099, Lot 000

Under a date of April 30, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze the existing commercial inn and associated structures and construct 3 duplex buildings on subject property located at 26 Elm Arch Way, Falmouth, Massachusetts.

A public hearing was held on June 19, 2014. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara and Associate Mark Cool

Clerk Bielan read the Notice of Public Hearing into the record.

Stephen O. McKenzie, Zoning Consultant, was present on behalf of Wald Management, Inc. and he noted that the principals, David and Diane Wald, were also present. Mr. McKenzie introduced Michael Borselli, P.E. project engineer who would answer questions regarding site design. Mr. McKenzie reviewed the existing site conditions that shows a 19 room Inn that was built in 1810 and moved to Elm Arch Way in 1926. The Richardson family developed the street, but keeping the Inn is too costly to update to current standards. The license for the Inn expired on April 30, 2014 – no abandonment issue. The subject property is zoned Business 1 and Residential C with a small northeast portion of the land located in the Historic District. The applicant is proposing to raze the 24,564 square foot Inn structure and associated accessory structures [including the pool] and construct three condominium units [duplexes]. He reviewed the plans for the units and explained that the Planning Department reviewed the parking lot and asked for it to be amended to have two driveways with back out areas for each unit. He explained the existing lot coverage by structures is 28.3% and the proposed units will have 27.8% lot coverage. The total lot coverage will be at 39% due to pavement and parking for the units. There will be six dwelling units [two in each building] that will create an average of 35 trips per day, which is much less than the Inn generated.

Clerk Bielan read the Town Department referrals into the record.

The Board members asked questions of Mr. McKenzie and Mr. Borselli regarding discontinued use of the Inn, the razing and reconstruction, parking, parking surface, total number of bedrooms on site and criteria to allow approval of a special permit for the multi-family use.

In responding to the Board's question on razing a commercial Inn and constructing dwelling units, Mr. McKenzie briefly discussed the "Shuffain" case from Norwood, MA and explained that the Norwood's bylaws are distinctively different from Falmouth. He said that Falmouth has allowed, through special permit, to raze one use and reconstruct a less nonconforming use and structures.

Chairman Haddad asked if anyone present would like to speak in opposition of the proposed project.

Sarah Peters of Elm Arch Way stated opposition and noted that the Inn was a major reason she moved to their location, stating "the Inn is a gem and has historic significance". She commented on parking plan and increase of cars on Elm Arch Way.

Sandra Botbol of Curtis Street stated opposition noting the 'crowding' and concern with the height of buildings as she feels they should be no taller than what exists.

Barbara Weyand of North Falmouth stated concern that the Board is not familiar with the changes of the Inn being previously a Captain's House.

Malcolm Donald of West Falmouth asked if there were any recommendations from the traffic advisory committee. He requested the Board to keep in mind that there is a local comprehensive plan and has historic preservation.

Linda Tobey of East Falmouth stated concern of the charm of Elm Arch Way changing.

Sandra Lee Drescher of West Falmouth stated concern with plan.

Donald Peters of Elm Arch Way stated opposition and noted that the grading plan is not clear on the south end and asked about retaining wall and driveways and said the whole thing looks like a monstrosity with the Great Wall of China.

Louise Mitchell of Linden Road in Falmouth stated opposition [resident for 35 years].

Mary Drescher of Elm Arch Way stated opposition and noted the charm of the Inn and concern with losing the charm.

Nancy Hayward of West Falmouth asked how the Board would look at views and vistas minus a historical building – change in views.

Chairman Haddad asked if anyone present would like to speak in favor of the proposed project.

Attorney Laura Moynihan representing the property owner stated she is in favor of the project and spoke to the elimination of nonconformities, decrease in traffic and improvement to the neighborhood through the project.

Member Foreman asked Attorney Moynihan's opinion on the criteria of the Town's bylaw and the term 'change'.

Ms. Moynihan addressed his question and stated she could submit information for the Board to review.

The Board discussed the proposed and asked for further information noting: case law; legal analysis of the work change versus rebuild; pre-1986 language of case law; issues of bulk being more than lot coverage comparison; get number of rooms and habitable space of the Inn and comparison with proposed units.

Member Foreman made a motion to continue the hearing to July 24, 2014 at 6:30 PM. Member Cool seconded the motion. Motion carried 5 – 0.

Continuation: July 24, 2014 – 6:30 PM, Selectmen's Meeting Room, Town Hall

#40-14 Wald Management, Inc., 26 Elm Arch Way, Falmouth, MA

Members sitting: Chairman David Haddad, Vice Chair Kenneth Foreman, Clerk Kimberly Bielan, Member Matt McNamara and Associate Mark Cool

Clerk Bielan read correspondence submitted to the file from the applicant's representative requesting a continuation to September 4, 2014 at 6:30 PM.

Member Foreman made a motion to continue the hearing to September 4, 2014 at 6:30 PM. Member

McNamara seconded the motion. Motion carried 5 – 0.

Continuation: September 4, 2014 – 6:30 PM, Selectmen’s Meeting Room, Town Hall

#40-14 Wald Management, Inc., 26 Elm Arch Way, Falmouth, MA

Members sitting: Chairman David Haddad, Vice Chair Kenneth Foreman, Clerk Kimberly Bielan and Member Matt McNamara

Clerk Bielan read correspondence submitted to the file by the applicant’s representative, Steven O. McKenzie. The letter dated September 3, 2014 was a request to the Board to withdraw the application 40-14 without prejudice.

Member McNamara made a motion to allow application 40-14 for Wald Management, Inc. be withdrawn without prejudice. Member Bielan seconded the motion. Motion carried 4 – 0.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to Grant application 40-14 for Wald Management, Inc. to be Withdrawn Without Prejudice.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 40-14

Applicant: Wald Management, Inc. of Falmouth, MA

Subject Property: 26 Elm Arch Way, Falmouth, Massachusetts
Map 47A, Section 14, Parcel 099, Lot 000

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant application 40-14 for Wald Management, Inc. to be Withdrawn Without Prejudice.

David Haddad, Board Chairman

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP #40-14 Wald Management LLC / 26 Elm Arch Way / Withdrawn without prejudice posted 9/12/14 mm