

Zoning Board of Appeals Decisions Decisions for: 07-24-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 42-14

APPLICANT: RYAN DEVELOPMENT, LLC of Westford, MA

OWNER: Kandy L. McKnight of Falmouth, MA

DEED/CERTIFICATE: Book 21027 / Page 66; Book 20918 / Page 188; Book 12664 / Page 216

SUBJECT PROPERTIES: 587 Main St., Falmouth, MA – Map 47B-04-015-000

17 Nye Road, Falmouth, MA – Map 47B-04-016-001

19 Nye Road, Falmouth, MA – Map 47B-04-016-002

Under a date of May 20, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-51 B.(3), 240-18.1 and 240-109 B. of the Code of Falmouth to construct one building for retail use with 2 apartments on second floor with associated parking and create a separate area for 35 parking spaces with an alternate surface to be used for parking for a fee operation (the 3 properties to be merged prior to construction) on subject properties located at 587 Main Street and 17 and 19 Nye Road in Falmouth, Massachusetts.

A public hearing was opened 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. After testimony and public comment, the hearing was continued to July 24, 2014 and after testimony and public comment the Board closed the hearing.

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

June 19, 2014:

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

Robert H. Ament of Ament Law Firm was present on behalf of the applicant and introduced Robert Walker owner of Ryan Development, LLC. Attorney Ament reviewed the existing properties noting that 587 Main Street is within the Business Redevelopment district; and 17 and 19 Nye Road are Business 2 zoned. He said the applicant would like to merge the three lots and remove the two dwellings currently located at lot 17 and 19 Nye Road. The proposed plans for merging the three lots show a retail building with two apartments on the second floor, associated parking for the retail and apartment use and a 35 parking spaces at the rear of the [proposed] merged lots to be used as a 'parking for a fee' operation with alternative parking surface; with a 'no right turn' out of the parking lot. He explained that the proposed retail use and two apartments are a by-right use in a Business Redevelopment district, which is what the front lot off Main and Nye Road is zoned. The portion of the lot that will have the parking for a fee operation is zoned Business 2 and requires a special permit. The proposed alternative surface for the parking for a fee use also requires a special permit. Attorney Ament said that it is unknown at this time what retail business will go in the building. Parking for a fee operation provides parking for the businesses not in the downtown area. He pointed out that there will be 8' arborvitae along the property line where the parking area abuts residential property. He said they are anticipating the use of grass pavers in the parking area or it could be permeable concrete.

Clerk Bielan read the Town Department referrals into the record.

A referral received from the Engineering Department noted that Main Street and Nye Road are public right of ways and the work within the right of way will require filing a permit with the Engineering Division; and that no stormwater runoff shall be directed onto public property, abutters or right of ways. Attached to the referral was a memo to the Planning Board for comments regarding the Site Plan Review.

A referral received from the Board of Health states: Applicant must properly abandon the existing septic systems and must obtain a permit to do so.

A letter from the Falmouth Fire Rescue Department was received on May 15, 2014 noting that the proposed building will require a fire alarm system that will need to be monitored by either the municipal fire alarm system or through a central station monitoring company; and they recommend a Knox box key entry system be installed.

Referrals sent to, but not received from Building, Conservation Commission, Design Review, Planning Department, Board of Selectmen or Water Department.

Clerk Bielan noted that there was 1 letter in opposition and one letter in support submitted to the file.

Board questions:

Board members asked questions regarding drainage on back portion of lot that will have parking operation, front portion of lot sidewalk and entrances to building and parking for proposed building and apartments.

Attorney Ament and Joe Peznola with Hancock Engineering answered questions from the Board.

Board questions on proposed parking for a fee operation at rear of lot. Member Bielan asked if there will be a set fee for parking, who will use the parking facility, will parking area be gated, will there be overnight parking and will it be used as overflow for building proposed.

Attorney Ament answered that the lot will most likely be rented to businesses versus public, it will require a gate with code and system that tallies number of cars entering and exiting, no monitor will be needed as gate tallies number of cars and the tenant [parking operator] could give code to building on lot for use.

Member McNamara asked if a hotel is constructed across the street, could they use the parking spaces; and with grass pavers, how will parking spaces be delineated [not asphalted and striped].

Attorney Ament stated a hotel could use the parking but it would be a special permit case. Mr. Peznola stated that the 35 spaces will have curb stops and painted grass to designate.

Chairman Haddad asked if the lot will have 24/7 parking [day and night access] and how will snow be handled on grass pavers.

Attorney Ament stated that the parking lot could have 24/7 access but probably not much use in the wee hours of the morning. He said snow can be plowed on grass pavers.

Member Bielan asked whether plowed snow would be kept onsite.

Mr. Peznola stated yes – at rear corner.

Member Foreman asked how the parking [for building] and parking operation be separate and asked if they would consider a wooden fence to divide the lots.

Mr. Peznola suggested curb stops at the paved lot before parking operation area. He said he could not commit to a fence.

Member Cool asked if there would be cameras to monitor the site in the event of vandalism.

Attorney Ament stated no.

Public comment in opposition to project:

Gerry Smith of 20 Nye Road, immediate abutter, stated he is not necessarily in opposition but has some concerns about the lighting on site – would it shine onto his property; concerned about noise in middle of

night if it is 24/7 parking as his bedroom window is near property line and privacy into their yard – he would like a higher fence [one is place is at 4' towards front and 6' towards the middle to rear property.

M. Wilson of 17 Nye Road stated opposition and spoke on his health issues – he rents one of the houses that will be removed from the site. He said the nature of the street is all residential and this parking operation will greatly impact the street. He also said LED lighting creates disturbances.

Keith Schwegel of 26 Queen Street stated opposition citing town's 'comprehensive plan' and said this project removes two affordable houses. He spoke on traffic impact and suggested they find space in Business Redevelopment for the parking lot. He asked what would prevent tour buses from going into the parking area.

Nancy Heyward of West Falmouth spoke in opposition as this is not what she envisioned when she voted for the Business Redevelopment zoning at Town meeting. She said Nye Road is a residential neighborhood and proposing a parking lot isn't right and asked if the applicant has proof that this is a 'clean brown lot'.

Leslie McDonald of Queen Street, spoke in opposition stating this is a neighborhood with narrow streets. She is concerned about how many trees will have to come down and take away the shading of the streets and that she would like to protect the rare cedar trees; and suggested property values will not increase due to the proposed project.

Member Foreman [due to the time being 10 PM] made a motion to continue the hearing to July 24, 2014 at 6:30 PM. Member McNamara seconded the motion. Motion carried unanimously.

Board voted 5 – 0 to continue the hearing to July 24, 2014 at 6:30 PM.

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

#42-14, Ryan Development, LLC
587 Main Street, 17 and 19 Nye Road, Falmouth, MA

Voting Members: Chairman Haddad, Vice Chair Foreman, Clerk Kimberly Bielan, Member McNamara and Associate Cool

Attorney Robert Ament was present on behalf of the applicant as well as Joseph Peznola [project engineer] and Robert Walker with Ryan Development. Attorney Ament reviewed a statement he had prepared addresses by right issues and parking for a fee use with alternative surface that requires a special permit. He said the uses on the front portion of the lot are allowed by right as it is zoned Business Redevelopment; and the proposed parking lot for a fee on the rear portion of the lot that is zoned Business 2 and requires a special permit for the use and the alternative surface. He feels that the parking lot will not impact area and will have less impact then some by right businesses. He spoke on a letter submitted by Ms. Baxter citing errors she had made; and he spoke to the letter submitted from abutter Mr. Smith requesting a 12' fence and buffering of arborvitae trees.

Attorney Ament stated that the lighting within the parking lot area will be no more than 8' in height and that there will be a fence installed along the property line abutting Mr. Smith and that arborvitaes will be planted as a buffer.

Clerk Bielan noted that there are now 29 letters in opposition and 1 letter in support submitted to the file.

Board questions:

Member Cool asked about impact of public parking vs parking for a fee; if this is 24/7 parking lot, who is potential user.

Attorney Ament stated public parking has no control and has more impacts than a 'fee' lot which is controlled. He said that there are other businesses in the area that would possibly use the parking or commercial accommodations proposed across the street.

Member Bielan asked if applicant engaged an engineer to conduct traffic report study.

Attorney Ament stated no that the Planning Board did not require one.

Member Bielan asked if the parking directly behind the building is for the building use only and will not be leased.

Attorney Ament stated it is for the building and bylaw requires 18 spaces. He said that the spaces are required and unless the applicant gets a special permit for shared parking the spaces cannot be leased out.

Member Bielan asked Attorney Ament if he believes that this 35 space parking lot is what was intended in the creation of the bylaw.

Attorney Ament stated yes.

Administrator Budrow asked if the proposed building and parking operation would be constructed whether or not a hotel is constructed across the street.

Attorney Ament stated he could answer that question.

Public Comment in opposition:

Leslie McDonald of Queen Street asked questions regarding possible uses at parking lot facility.

Gary Girouard of Nye Road spoke in opposition citing traffic concerns and impact on residential neighborhood and concerned about children at play when the 'residential' traffic becomes 'commercial' traffic.

Mr. Ridgeway of Lantern Lane spoke in opposition citing negative traffic impacts on top of already adverse impacts on Nye Road and Main Street if project is approved.

Mary Barry of 26 Queen Street spoke in opposition citing traffic concern and impact on neighborhood. She stated that the proposed could bring up to 3,000 cars a day onto Nye Road and filter off through Queen Street and other area roads. She gave her opinion of traffic on Main Street, Nye Road and other area roads.

Chairman Haddad asked if anyone would like to speak in support of the project.

Kandy McKnight of Lantern Lane (owner of subject properties) spoke in support of the project.

Board Discussion:

Member McNamara stated he had concerns as both sides [applicant and parties opposed] asked the Board to speculate: Opponents asked the Board to speculate on a Marriott hotel being constructed in the future possibly across Main Street from proposed; and the applicant is asking the Board to speculate on by right uses. The parking for a fee lot requires a special permit – but the applicant doesn't know who will run it; who will use it; will it be 24/7, etc. He said he is not comfortable making a decision on 'hypothetical' or 'speculation'. He said if the applicant were just constructing the building with apartments on the front lot it would not require a special permit; but the parking lot at the rear of lot is before us with speculated vehicle trips from 2 to 27 cars; there are already existing road conditions in this area. He said he believes that under Section 240-216 of the Code of Falmouth, that 17 and 19 Nye Road are not suitable for this use and would be irreparably more detrimental; impact on traffic flow exists. Flow of traffic will impact streets from this lot regarding of directional signage on site. Project is too iffy – who does what, who parks, who controls, etc.? He said parking on this would impact safety and safety impact on a residential neighborhood is irreparable. The by right use at front portion of lot(s) can remove existing dwellings without special permit.

Member Foreman said 240-216 is not pertinent for hypothetical but that he has trouble with impact on traffic question as there is no professional evaluation – no traffic study report. He said he could not support the application without this information to evaluate properly.

Member Bielan stated she agrees; the Board needs data – this is a parking lot – of course the Board needs data regarding traffic impact. Without the data to evaluate she is not in favor of the application.

Member Cool agrees with all; he believes the application lacks professional traffic reports and impact study.

Chairman Haddad said he disagrees with the need for a traffic study. He said he is very familiar with the road and travels this road as a short cut; there are a lot of children in this neighborhood – this is a definite negative impact on this neighborhood and is not in support of the application.

Attorney Ament asked the Board to allow the applicant to withdraw the application without prejudice.

Member McNamara made a motion to grant the applicant to withdraw without prejudice. Member Bielan seconded the motion. Motion carried 5 – 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 5 – 0 to Grant the application for Ryan Development, LLC to be Withdrawn Without Prejudice regarding 487 Main Street and 17 and 19 Nye Road in Falmouth, Massachusetts.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 42-14

Applicant: RYAN DEVELOPMENT, LLC

Subject Property: 587 Main Street Falmouth and 17 and 19 Nye Road, Falmouth, MA

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

Vote: 5 – 0 to Grant the applicant to Withdraw the application Without Prejudice. Application withdrawn.

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:

#42-14 Ryan Development, LLC - 587 Main St., 17 & 19 Nye Rd / Withdrawn Without Prejudice posted to web 8/6/14 mm