

Zoning Board of Appeals Decisions Decisions for: 04-17-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 26-14

APPLICANT: MATHIEU ROCHELEAU of East Falmouth, MA

SUBJECT PROPERTY(S): 15 Box Wood Circle, Falmouth
Suzanne M. Rocheleau, Trustee - Owner
Map 47B, Section 02, Parcel 018, Lot 024
Certificate #165440 - Plan 18441-M

And: 14 Occum Lane, Falmouth, MA
Mathieu Rocheleau, Trustee - Owner
Map 47B, Section 02, Parcel 018, Lot 025
Certificate #194617 - Plan 18441-M

Under a date of March 25, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to combine two existing buildings for one commercial use on Business 2 zoned lots to be merged known as 15 Boxwood Circle and 14 Occum Lane, Falmouth, Massachusetts.

A public hearing was held on April 17, 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, Clerk Scott Zylinski, Member Matthew McNamara, Member Patricia Johnson and Associate Kimberly Bielan

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

Mathieu Rocheleau, applicant/owner, was present and explained to the Board that he owns and operates the "Clam Man", a retail fish store, at 15 Boxwood Circle and recently purchased the abutting lot to the rear at 14 Occum Lane [2011] where he receives fish and shellfish from purveyors for his retail sales. The plan is to merge the two properties into one and to join the two existing buildings by constructing a connector. Mr. Rocheleau explained that the use for each building will remain the same and that the plan does not affect the surrounding residences.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Board of Health stated that there are no issues with the proposed plan.

A referral from the Engineering Department states the standard requirements if utilities are affected by change or alteration. An added comment was that if the two lots are combined into one, please see the Engineering Division to revise the address in the Town system.

The Fire Department submitted a memo as a referral addressed to the Zoning Administrator that Lt. Trott has contacted Mr. Rocheleau regarding the application and after review of the plans, they have no issues.

A referral from the Planning Department notes that an ANR [Approval Not Required] was endorsed on February 4, 2014.

A referral from the Building Department stated no objections.

A referral submitted from the Water Department had no comment.

Clerk Zylinski noted that there was no correspondence submitted to the file from abutters or interested

parties.

Board Questions:

Member Johnson asked what type of roof would be on connector.

Mr. Rocheleau said it would a shed roof.

Member Bielan asked if front of [new] property had been designated.

Mr. Rocheleau stated it would be 15 Boxwood Circle.

Member Bielan asked what the connecting of the two buildings was for.

Mr. Rocheleau stated that they carry product from one building to the other once processed; it is used by employees only and it gives cover for transport from one building to the other and for the fish totes used in the operations.

Member Zylinski asked where deliveries would be made.

Mr. Rocheleau stated previously made to front of retail space; now deliveries will be made off Occum Lane at rear of building.

Member Zylinski asked about parking on the properties and asked if it was shared parking as he has observed parking at night from patrons of Peking Palace.

Mr. Rocheleau stated that his property is for his retail patrons and employees. He said he tries to be a good neighbor and said that his operation closes at 6:00 PM so there may be parking for close by restaurants.

Member Cool stated he was confused as well by the "additional parking" sign near site.

Member McNamara asked if there were any changes to the operation as it exists and if there has been any complaints.

Mr. Rocheleau stated there are no changes to the operation and that there have not been any complaints that he is aware of.

Member McNamara asked if previous Special Permit from 2005 was for both properties.

Mr. Rocheleau stated no – just for 15 Boxwood Circle.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Mr. Robertson of 480 Main Street [abutting condominiums] stated he is speaking on behalf of the Nye Road Condominiums as they were polled and all are in support of the proposed merging of the two lots and connecting the two buildings.

Board discussed application and testimony briefly.

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

Chairman Haddad closed the Hearing.

Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property(s) located at 15 Boxwood Circle and 14 Occum Lane total 10,392 square feet of

Business 2 zoning that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to connect the two existing buildings on pre-existing nonconforming lots that have been approved under an ANR to be merged. The property is zoned Business 2 and is not located within any overlay District. There are previous Special Permits on subject property known as 15 Boxwood Circle [prior to merging with 14 Occum Lane] - # 4-97 and #84-05. The subject property abuts Business Redevelopment zoned properties to the south and Residential C zoned properties to the north. The applicant owns both lots [he purchased 14 Occum Lane in 2011 and has owned 15 Boxwood for over 10 years]. The applicant owns and operates "The Clam Man" Seafood Store at 15 Boxwood Circle and has been receiving shellfish and fish at the 14 Occum Lane building since he purchased it. He merged the two properties discussed herein through an ANR (Approval Not Required plan) and would like to connect the two buildings by constructing a connector. The proposed plan as one lot was submitted and requested application for the connection of two buildings for the commercial use existing on the 'property'. According to Section 240-68 B. (8) the plan submitted as one lot shows lot coverage by structures is less than 30% thereby requiring that side and rear yard setbacks be 20' from property lines pursuant to Section 240-68 B. (3). The applicant stated that Engineering Department has given the address of the merged lots as 15 Boxwood Circle, it does not clarify if Occum Lane and Boxwood Circle will continue to be known as a 'front yard'. Setbacks from the structures on the plan submitted show that structures meet the 25' setback to both Boxwood Circle and Occum Lane. Applicant can request determination from the Building Commissioner to allow Occum Lane as the rear yard pursuant to Section 240-13 "Definitions" - 'Yard, Front'.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed connection of the two buildings on the newly merged lot known as Lot 25A will not be substantially more detrimental than what previously existed on two abutting lots zoned Business 2. The Board further finds that the proposed connection of the two buildings will be an enhancement to the commercial/retail operation existing on site. Furthermore, the Board finds that the proposed connector will not impact any existing exterior operations on site; however, it will improve parking and delivery conditions for the retail operation.

In addition to the above findings, the Board finds that the proposed will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the proposed building connection as it will only improve conditions for parking and retail operations on site.
- B. The site is suitable for the proposed use as the property is zoned Business 2 and the retail operations on site are in compliance with Town Code.
- C. There will be improvement to traffic flow as deliveries will be made off Occum Lane side of property and not in front of the retail operation on Boxwood Circle; and the parking for the site will be improved.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and signed off by the Board of Health.
- F. There are adequate utilities to subject property by virtue of ongoing operation for many years; and referrals from Town Departments have no comment.
- G. The proposed connection to join the two buildings discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

Member Zylinski made a motion to Grant the Special Permit with conditions. Member McNamara seconded the motion.

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 Special Permit to Mathieu Rocheleau (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a connector to join the two building structures on a newly merged lot known as Lot 25A and 15 Boxwood Circle, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the connector to join the two buildings on subject property, all setbacks, lot coverage, parking and use of structure(s) shall be as represented to the Board herein and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Addition" prepared for Mathieu Rocheleau 15 Boxwood Circle & 14 Occum Lane Falmouth, Massachusetts, Drawing Number B22-11 drawn by BSS Design, Inc. dated March 4, 2014 with a Board date 'received' stamp of March 5, 2014; and
- "The Clam Man Falmouth, MA" architectural plans drawn by Architecture by SPB consisting of Drawing A1 showing elevations, Drawing A2 showing proposed building connector layout, Drawing S1 showing foundation plan and Section and Drawing S2 showing roof framing plan – all drawings dated 2/24/14 and with a Board date 'received' stamp of March 5, 2014.

2. There shall be no derogation from any condition set forth in previous Special Permits #4-97 and #84-05 except as stated herein.

3. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

4. The applicant shall file with the Board of Appeals a copy of the plan that was filed with the Registry of Deeds merging the two lots [15 Boxwood Circle and 14 Occum Lane] as represented herein. A copy of the filed plan shall be submitted prior to issuance of a Building Permit.

5. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

6. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 26-14

Applicant: MATHIEU ROCHELEAU of East Falmouth, MA

Subject Property: 15 Boxwood Circle and 14 Occum Lane, Falmouth, MA
Map 47B, Section 02, Parcel 018, Lot 024
Map 47B, Section 02, Parcel 018, Lot 025

Now known as: Map 47B, Section 02, Parcel 018, Lot 025A – 15 Boxwood Circle

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 Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Scott Zylinski, Clerk, Board of Appeals

_____ 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 26-14 Rocheleau / 15 Boxwood Circle / Merge Commercial Bldgs posted to web 4/30/14 mm