

Zoning Board of Appeals Decisions Decisions for: 02-13-2014

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

Comprehensive Permit No: 8-14

Applicant: FALMOUTH HOUSING TRUST, INC. of Falmouth, MA

Property Address: 761 Teaticket Highway, East Falmouth, MA

Assessor's Map: Map 34, Section 06, Parcel 015, Lot 001K

Date of Hearing: February 13, 2014

Summary: Granted with Conditions

Zoning: Residential C

Groundwater Overlay: Great Pond Coastal Pond Overlay

PROCEDURAL HISTORY

On January 13, 2014, Falmouth Housing Trust, Inc., 200 Main Street, Suite 212, Falmouth, Massachusetts (hereinafter Applicant), applied for a comprehensive permit from the Zoning Board of Appeals of Falmouth (Board), pursuant to G.L. c. 40B and 760 CMR 56.00, to construct 3 single-family dwelling units at what is currently known as 761 Teaticket Highway, East Falmouth, MA that is a one acre parcel. The applicant is proposing to subdivide the subject property into three separate lots and construct an affordable single-family dwelling on each of the three lots. The three single-family dwelling units will be held affordable in perpetuity and sold to household(s) earning no more than eighty percent (80%) of the median household income for Barnstable County according to DHCD guidelines. The subject property (Map 34, Section 06, Parcel 015, Lot 001K) is zoned Residential C and is located within the Great Pond Coastal Pond Overlay District. The subject property is located on the corner of Teaticket Highway (Route 28) and St. Marks Road. St. Marks Road is developed with several single-family dwelling units within the area.

A duly advertised public hearing was opened and closed on February 13, 2014. The Board of Appeals directed the Zoning Administrator to draft an affirmative decision for their review on February 27, 2014 at a duly posted open meeting of the Board of Appeals. Members sitting are Chairman David Haddad, Vice Chairman Kenneth Foreman, Member Matthew McNamara and Member Patricia Johnson.

On January 14, 2014 a referral to Town Departments was sent out which also requested attendance at a meeting to be held January 24, 2014 at 10:00 AM in the ZBA Conference Room for:all departments to commence the review process regarding this 40B project and discuss any concerns or issues. Attendees at the meeting was Zoning Administrator Budrow, Applicant representative Annie Saganic, Marlene McCollem – Assistant Town Planner and Scott Schluter – Engineering Department.

The Board received documents and exhibits during the public hearing which are on file in the office of the Board of Appeals at Town Hall, and are as follows:

Letters/E-mail from Abutters

Received 2/3/2014 Letter in support from Barbara Swartz of Falmouth Port Drive

Letters/E-mails from Applicant

Received 1/13/2014 Signed waiver by Applicant to extend the thirty day hearing process by two days – filed with Town Clerk 1/15/2014

Received 1/13/2014 E-mail from Applicant to Zoning Administrator Budrow answering questions regarding size of proposed dwelling structure(s) of development

Received 2/10/2014 E-mail from Applicant to Zoning Administrator Budrow with response to snow removal, trash removal and bus stop use for proposed 40B project

Received 2/10/2014 E-mail from Applicant to Town Planner [Brian Currie] requesting confirmation that Falmouth Public School students can use the proposed CCRTA sheltered bus stop adjacent to property at Teaticket Highway [see thread from 1/17/2014 to 2/1/2014]

Letters/Referrals from Departments

Received 2/5/2014 Letter from Falmouth Planning Board Chairman Patricia Kerfoot to Zoning Board of Appeals Chairman Haddad stating that the Planning Board voted 2/4/2014 a positive referral of the proposed 40B project

Letters/Referrals from Outside Sources

Received 1/13/2014 Letter of 10/30/13 from DHCD to Applicant (was part of application) for project eligibility

Received 1/13/2014 Letter of 1/10/2014 to Applicant from The Resource Inc. as a commitment to serve as a lottery agent for the proposed project

Received 1/13/2014 Letter of 10/16/2012 from Town of Falmouth to Applicant as notification of the Town offering Applicant the award for a three-unit affordable housing development utilizing the Town owned property that is the subject property of this 40B development

Received 1/13/2014 Letter of August 20, 2013 to Applicant from Affordable Housing Committee stating support of the proposed 40B project

Received 2/11/2014 Letter of February 7, 2014 to Zoning Board of Appeals Chairman as a referral with comments regarding proposed 40B project

Referrals from Town Departments/Boards

Received 1/30/2014 Referral from Conservation Commission that stated: No wetland resource areas within jurisdiction, stormwater appear to be addressed on site.

Plans/Info submitted from Applicant

Received 1/13/2014 Applicant submitted application with Site Plans, Architectural Plans and additional information that included a 'Purchase and Sale Agreement' for subject property, Development Team (for proposed project) with contact information, letter of status from IRS regarding Falmouth Housing Trust's 501 (c) (3), Project Feasibility, Profitability Statement, Responsibility for Cost Certification and Affirmative Marketing Plan

Received 1/13/2014 Preliminary architectural plans drawn by William Roslansky Architect dated 9/6/2013 consisting of seven (7) pages showing elevations and floor plans for the three different single-family dwellings proposed for the development by Falmouth Housing Trust

Received 1/13/2014 "Layout Plan" for Site Plan prepared for Falmouth Housing Trust in Teaticket, MA - Sheet 1 of 4 drawn by Holmes and McGrath, Inc. dated July 16, 2013

Received 1/13/2014 "Existing Conditions" for Site Plan prepared for Falmouth Housing Trust in Teaticket, MA - Sheet 2 of 4 drawn by Holmes and McGrath, Inc. dated July 16, 2013

Received 1/13/2014 "Grading, Drainage & Utilities" for Site Plan prepared for Falmouth Housing Trust in Teaticket, MA - Sheet 3 of 4 drawn by Holmes and McGrath, Inc. dated July 16, 2013

Received 1/13/2014 "Construction Details" (septic system) for Site Plan prepared for Falmouth Housing

Trust in Teaticket, MA – Sheet 4 of 4 drawn by Holmes and McGrath, Inc. dated July 16, 2013

FINDINGS

1. The Board finds that:

(a) The Applicant is a nonprofit organization as referenced in 760 CMR 56.00;
(b) The project is fundable by DHCD, a Subsidizing Agency, under a Low or Moderate Income Housing subsidy program as indicated by the project eligibility/site approval letter for a Local Initiative Program (LIP) by the Department of Housing & Community Development [DHCD] dated October 30, 2013;
(c) the Applicant has "control of site" as referenced in 760 CMR 56.04 by virtue of a "Purchase and Sales Agreement" with the Town of Falmouth as the 'Seller' and Falmouth Housing Trust, Inc. as the 'Buyer', signed by the Town Manager on 11/5/2012 and the representative for Falmouth Housing Trust, Adelaide Drolette, on 10/3/2012.

2. The Town of Falmouth, according to DHCD, has not achieved the statutory minimum set forth in G.L. c. 40B, s. 20 or 760 CMR 56.01, nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use.

3. The proposed development was reviewed by the following municipal officers or agencies:
Marlene McCollem, Assistant Town Planner
Planning Board Members
Engineering Department
Board of Health Department

4. As required in this decision, each dwelling unit will be serviced by a public water supply and approved septic system for each of the three individual lots created through this Comprehensive Permit.

5. As represented by the Applicant, there will be trash removal by the Town.

6. As shown on the plans noted herein, the three lots will have a 'common' driveway entrance – one curb cut off St. Marks Road – that will allow access to each lot's individual driveway. Applicant represented that the residents of the units proposed will maintain individual driveways and work together to insure maintenance and care of driveway entrance and curb cut as there will be no association requirements for the development of these three lots. The Board further finds the requested waiver of Section 240-28 J. [Common Driveway] is appropriate as the common driveway shown on the plan submitted provides greater safety from and onto St. Marks Road.

7. The Applicant reviewed landscape and lighting plans with the Board and insured that landscaping along St. Marks Road will not impact site distance onto St. Marks Road and that any tree trunk will be located within 10 feet of the front property line of subject properties off St. Marks Road. The Board further finds that the street lights on St. Marks Road (3) in the vicinity of the common driveway adds adequate lighting at the common driveway entrance.

8. The Board finds the three (3) lot subdivision is more in keeping with the neighborhood as compared to having three (3) dwellings on a single lot.

9. The Board finds that the Development would not endanger public health or safety or the environment, provided that the Development satisfies all of the conditions set forth below.

10. The Board finds that the Applicant, Falmouth Housing Trust, Inc., will be the Monitoring Agent for this development.

11. The Board finds that if developed in accordance with the Conditions set forth herein, the proposed Development will be consistent with local needs.

DECISION

Pursuant G.L. c. 40B and CMR 760 56.00, the Zoning Board of Appeals of Falmouth, after public hearing

and findings of fact, hereby grants a comprehensive permit pursuant to M.G.L. Chapter 40B to the Applicant for the construction on the subject property known as 761 Teaticket Highway, East Falmouth, MA for the subdivision of this property into three lots, each with a single-family dwelling containing three (3) bedrooms with associated infrastructure and improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean the Falmouth Housing Trust, Inc., its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Zoning Board of Appeals. Unless otherwise indicated herein, the Board of Appeals may designate an agent or agents to review and approve matters set forth herein.

CONDITIONS:

1. The Development shall be constructed as represented to this Board in substantial conformance as shown on plans of record set forth below known as:

- "Layout Plan" for Site Plan prepared for Falmouth Housing Trust Inc. drawn by Holmes and McGrath, Inc. - Sheet 1 of 4 dated July 16, 2013 with a Board date 'received' stamp of January 13, 2014;
- "Existing Conditions" for Site Plan prepared for Falmouth Housing Trust, Inc. drawn by Holmes and McGrath, Inc. - Sheet 2 of 4 dated July 16, 2013 with a Board date 'received' stamp of January 13, 2014;
- Grading, Drainage & Utilities" for Site Plan prepared for Falmouth Housing Trust, Inc. drawn by Holmes and McGrath, Inc. - Sheet 3 of 4 dated July 16, 2013 with a Board date 'received' stamp of January 13, 2014;
- "Construction Details" for Site Plan prepared for Falmouth Housing Trust, Inc. drawn by Holmes and McGrath, Inc. - Sheet 4 of 4 dated July 16, 2013 with a Board date 'received' stamp of January 13, 2014;
- "St. Marks Affordable Housing" Architectural Plans prepared Falmouth Housing Trust, Inc. drawn by William Roslansky Architect dated 9/6/2013 consisting of seven (7) pages that include elevations and floor plans for three (3) different three-bedroom home models - one of each model will be located on each lot created herein. Plans have a Board date 'received' stamp of January 13, 2014.

2. A subdivision plan showing the one acre parcel divided into three lots as approved herein shall be prepared and filed with the Barnstable Registry of Deeds and a copy of said filing shall be submitted to the Board of Appeals prior to issuance of a building permit.

3. The Development as proposed and approved herein shall consist of the one acre parcel known as 761 Teaticket Highway to be subdivided into three lots, each having frontage on St. Marks Road and each lot will have one three-bedroom single-family affordable dwelling unit. The development shall be limited to the three dwellings represented herein and shown on above plans. Each unit shall have three bedrooms and two bathrooms.

4. The three units created within this development shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the median household income for Barnstable County according to statistics published by the U.S. Department of Housing and Urban Development (HUD).

5. The Applicant will add sufficient lighting at each driveway head [near respective dwelling] for added safety to site. The lighting may be a low post light with low level lighting, solar, etc. Type of lighting shall be noted on final preliminary landscape and lighting plan.

6. The Landscaping and Planting Plan shall show native plantings and show that the trees planted on each side of the driveway entrance shall have the trunk of each tree no closer than 10 feet to the front property line of each lot off St. Marks Road.

7. The Applicant will submit the Landscaping and Planting Plan and the Lighting Plan to the Board of Appeals prior to issuance of a building permit. The Landscaping and Planting Plan and the Lighting Plan will be administratively approved by the Board of Appeals.

8. One of the three (3) affordable units approved herein shall be constructed as handicap visitable as testified to by the Applicant during the February 13, 2014 public hearing process.

9. To the extent permitted by law and DHCD, preference for the sale of the Affordable units in the initial round of sales shall be given to persons or families who are first time home buyers and Falmouth residents; and/or (b) the parents or children of current Falmouth residents, and/or (c) employees of the Town of Falmouth or those employed within the Town of Falmouth. To the extent permitted by law and DHCD the local preference lottery shall be implemented by a The Resource Inc. as requested by the

Applicant through this application. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan to the Board of Appeals for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

10. Prior to the issuance of any building permit, the Applicant shall prepare the final draft of a Regulatory Agreement and a Deed Rider and submit same to the Board for approval as to form by the Board's legal counsel and for execution by and with the Town. Such document(s) shall contain at a minimum, the following terms:

- (a) The three affordable units created shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income for Barnstable County.
- (b) The right of first refusal to purchase an affordable unit on resale shall be granted to the Town of Falmouth acting by and through its Board of Selectmen.
- (c) Each affordable units shall be identified in the Regulatory Agreement.
- (d) The affordable units shall be owner-occupied only; provided, however, that the Monitoring Agent [Falmouth Housing Trust], may permit, according to the Regulatory Agreement, the temporary rental of such units at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as illness in the family, military duty, or the like.

11. Prior to the issuance of any certificate of occupancy, the Applicant shall submit a copy of the Monitoring Agreement approved as to form by the Board's legal counsel. Such Agreement(s) shall be consistent with the terms of this Decision. All costs associated with monitoring shall be borne by the Applicant until the sale of the last affordable unit, and thereafter by the sellers of the Affordable Units. The Applicant shall provide a copy of the final Cost Certification provided to DHCD to the Zoning Board of Appeals within thirty (3) days of approval of the final Cost Certification by DHCD.

12. This Comprehensive Permit shall be a master permit which shall subsume all local permits and approvals normally issued by local boards. All local boards shall issue all necessary permits and approvals after reviewing such plans only to insure that they are consistent with the comprehensive permit and applicable state and federal laws.

13. This Comprehensive permit shall not be transferred to a person or entity other than the Applicant without the written approval of this Board.

Management Issues

14. The Applicant has proposed, and the Board of Appeals hereby requires, that the following aspects of the Development shall be and shall remain forever private, and that the Town of Falmouth, unless otherwise agreed, shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- All driveways and parking areas
- Stormwater management
- Snow plowing
- Landscaping
- On-Site lighting

15. The Owners of the affordable units created herein shall be responsible for the maintenance of their own individual lot, individual septic system, driveway and 'in-common' entrance to driveways described herein.

Construction

16. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final information or plans for approval by the Board of Appeals or its agent:

- Lighting plan
- Landscaping and planting plan

- Grading plan
- Erosion control plan
- Stormwater management design
- Final architectural plan

The Zoning Administrator shall provide a written final approval of the plan to the Board of Appeals. The Board of Appeals shall approve such final plan within 21 days thereafter. Such approval shall not be unreasonably withheld. The failure of the Board of Appeals to approve such final plan within said 21 days shall be deemed a lack of opposition thereto.

17. The proposed three units as shown on the plans approved and noted herein shall meet all dimensional requirements pursuant to Section 240-68 A. and B. for setbacks; Section 240-69 A. for lot coverage requirements; and Section 240-70 for height of structure requirements.

18. The plans approved herein do not contain any detached accessory structures.

19. During construction, the Applicant shall conform to all local, state and federal laws regarding noise, vibration, dust and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day before 7:00 a.m. and shall not continue beyond 7:00 p.m. There shall be no construction on any Sunday or state or federal legal holiday

20. The Applicant shall promptly pay the reasonable fee of the consulting engineer and the Board's legal counsel for review of the documents or plans described herein.

21. Inspections during the construction phase shall be conducted, at the expense of the Applicant, in accordance with the Rules and Regulations of the Planning Board. The Board of Appeals may appoint an agent to conduct such inspections.

22. Should the drainage system as installed prove not adequate to prevent the development from increasing ground water elevation and adversely affecting nearby properties, the Board will, upon request of either the applicant or any neighbor, review the ground water conditions with the interested parties and may administratively approve changes to mitigate the problem. It is intended that the development not cause any increase in ground water elevation, over what may occur under the existing conditions that might adversely affect nearby residents.

23. No certificate of occupancy for any building shall be issued until the improvements specified in this decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or adequate security has been provided, reasonably acceptable to the Board of Appeals, to ensure such completion. Any such performance guarantee shall be approved as to form by the Board's legal counsel.

24. The Board of Appeals denies any fee waivers for this development.

25. The term "Applicant" as set forth herein shall mean Falmouth Housing Trust, Inc., and its heirs, successors and assigns. The term "Town" shall mean the Town of Falmouth. The term "Board" shall mean the Zoning Board of Appeals. Unless otherwise indicated herein, the Board of Appeals may designate an agent to review and approve matters set forth herein to be approved by the Board of Appeals subsequent to this Decision.

26. The Applicant has requested, and the Board of Appeals has granted, the waivers from local rules set forth herein. To the extent that the Plan shows additional waivers at specific locations not expressly set forth above, these waivers are also granted. Minor deviations from otherwise applicable local rules may be authorized by the Board of Appeals in the subsequent review and approval of final plans.

- Section 240-67 "Minimum lot dimensions" – sub-section A. 'Residential C' zoning – minimum lot area 40,000 square feet; lot width 100 feet and lot frontage 100 feet; and
- Section 240-28 "Special permit uses" – sub-section J. – Common driveway, by special permit from the Planning Board

Comprehensive Permit Decision by Falmouth Zoning Board of Appeals continued:

Comprehensive Permit#: 8-14

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Applicant: FALMOUTH HOUSING TRUST, INC. of Falmouth, MA

Subject Address: 761 Teaticket Highway, East Falmouth, Massachusetts
Map 34, Section 06, Parcel 015, Lot 001K

Action: The Board of Appeals, by the Chairman's signature below, represents that the Board voted as follows for the above referenced Comprehensive Permit.

Vote: Board voted 4 – 0 to Grant the Comprehensive Permit requested herein based on the Findings and subject to the Conditions stated above.

David Haddad, Chairman Date filed with Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 20-23 of M.G.L. Chapter 40B and 760 CMR 56.00, and shall be filed within twenty (20) days after the rendering of the decision by the Board of Appeals.

Notes:

CP #8-14 Falmouth Housing Trust, Inc. / 761 Teaticket Hwy / 40B posted to web 3/3/14 mm