

Zoning Board of Appeals Decisions Decisions for: 09-10-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 75-15

APPLICANT(S)/OWNER: HARBOR HEAD TENNIS CLUB, INC. of West Falmouth, MA

DEED/CERTIFICATE: Lot 1 - Book 2024, Page 29 / Lot 2 - Certificate 165461, Plan 15843-B

SUBJECT PROPERTY: 13 Nashawena Street, W. Falmouth – Map #24A-07-009-001
25 Old Dock Road, W. Falmouth – Map #24A-07-014B-002

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of August 3, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 D., 240-109 B., 240-68 A. (8), 240-3 C. and 240-216 of the Code of Falmouth to raze existing clubhouse and reconstruct two new structures for use as clubhouse on subject properties known as 13 Nashawena Street and 25 Old Dock Road, West Falmouth, Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on September 10, 2015.
4. The public hearing was terminated on September 10, 2015, wherein the Board consisting of Acting Chair Terrence Hurrie, Member Ed Van Keuren, Acting Clerk Paul Murphy and Associate John Sutherland made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Jacqueline Downey of Ament Law Firm, LLC who reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

9/8/2015 Letter of 9/3/2015 stating support of the proposed project by Mark and Nancy Strickland of 31 Old Dock Road, West Falmouth.

Letters/E-mails/Information from Applicant/Representative(s)

E-mails between staff and Ament Law Firm regarding plans.

9/10/2015 At the hearing Attorney Downey submitted to the Board a copy of the "Title 5 Official Inspection Form" for lot 1.

Letters/Referrals/E-mails from Town Departments

8/4/2015 Referral submitted to the file from the Planning Department with no comment.

8/10/2015 Referral submitted to the file from the Building Commissioner with no comment.

9/2/2015 Referral submitted to the file from the Engineering Department with standard comment regarding changes to roadway or utilities require permit from appropriate departments.

8/12/2015 Letter of 8/11/2015 submitted to the file from the Falmouth Fire Rescue Department stating: "The new structures will have to conform to any life safety system requirements for their use and occupancy as required by the Massachusetts State Building Code."

Plans submitted by Applicant/Applicant's Representative

8/3/2015 "Plan of Proposed Clubhouse Reconstruction" prepared for Harbor Head Tennis Club for Lot 1, #13 Nashawena Street in West Falmouth, MA – Sheet 1 of 1 as drawn by Holmes and McGrath, Inc., stamped and signed by Joel R. Kubick, P.L.S. dated July 21, 2015 and with a Board date "Received" stamp of 8/3/2015;

9/9/2015 "Harbor Head West Falmouth, MA" by Salt Architecture – Drawing A010 'Floor Plans – Existing Clubhouse' dated 7/17/2015 with a Board date 'Received' stamp of 9/9/2015; and

9/9/2015 "Harbor Head West Falmouth, MA" by Salt Architecture – Drawing A100 'Foundation Plan', Drawing A101 'First Floor Plan', Drawing A200 'Exterior Elevations' and Drawing A201 'Exterior Elevations' – all with a final revision date of 9/7/15 and with a Board date 'Received' stamp of 9/9/2015.

Hearing:

Attorney Jacqueline Downey with Ament Law Firm was present on behalf of the applicant, Harbor Head Tennis Club, which is a not-for profit private tennis club that was established in 1947. A private non-profit club was a use permitted in a residential district by right until 1971, when the Zoning bylaw was amended to require a special permit for such a use. She then reviewed the existing site conditions and the proposed razing of the existing clubhouse and the construction of the two new proposed clubhouse structures – one structure noted on the plans as 'Club Office' and the other noted as 'Clubhouse'. The height of the proposed clubhouse will be 22.7'. Attorney Downey addressed the Board of Health referral and informed the Board that the crawl space proposed will be filled in to meet the CMR regulations relative to the proximity of the cesspool. The existing shed on site will remain. The total square footage of the structures proposed are 1,080 square feet in size and the proposed deck connecting the two structure is 1,300 square feet in size. Attorney Downey stated that the Tennis Club owns Lot 1 known as 13 Nashawena and Lot 2 known of 25 Old Dock Road. Lot 1 has existing clubhouse, shed and four (4) tennis courts; Lot 2 is used for parking which has a gravel surface and accommodates no less than 20 vehicles. Lot 2 also contains a 12' wide way easement (from south to north – to Lot 1). The gravel surface on Lot 2 has been existing for many years.

The Board discussed with Attorney Downey the plans submitted for the proposed raze and reconstruct of the clubhouse. Board discussed concern with existing cesspools and asked for the septic inspection that Attorney Downey stated was conducted. Attorney Downey submitted the inspection report. The report states that there is one cesspool and it passed inspection.

Chair Hurrie asked for any public comment in support or opposition of the proposed reconstruction.

Nancy Heyward of Chase Road in North Falmouth stated concern with the address of the property on the plan vs. the address noted on the agenda. She further expressed concern with the age and integrity of the existing cesspool and its proximity to the West Falmouth Harbor.

Maureen Harlow-Hawkes of 90 Old Dock Road stated concern with the existing cesspool and lighting on site. She suggested motion sensor lights instead of the constant flood lights existing. She further stated that the club has recently had tournaments starting as early as 7:00 am and they use a megaphone which can be heard by abutters as well as an outdoor church service nearby. She asked if the Board could restrict the megaphone and/or PA system use until after 10:00 am.

Ellen Donaldson, Secretary of the Tennis Club, spoke in favor of the project and noted there are 130 play members and 75 social members. She noted that the current clubhouse has mold issues and that the club is a seasonal operation.

Ms. Hawkes asked if there is a cap on the membership. She further commented that there are no street numbers visible from the roadway for emergency vehicle use.

Note: There was no response to the question of 'cap on membership'.

Attorney Ament stated that the address will be posted more clearly. He explained that the parking area (Lot 2) is registered land and the clubhouse land (Lot 1) is unregistered, so merging of the lots would only be for zoning and assessing reasons; and he said it makes sense to use Old Dock Road as address, not Nashawena.

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 4 - 0.

Chair Hurrie 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 where the clubhouse will be razed and two new structures constructed is located at 13 Nashawena Street in West Falmouth contains 3.65 acres of Residential B zoned land that is located in the West Falmouth Harbor Coastal Pond Overlay District. The abutting lot owned by the applicant and discussed herein is located at 25 Old Dock Road in West Falmouth and consists of 16,095 square feet, also located in the West Falmouth Harbor Coastal Pond Overlay District and is used by the applicant as parking for the Tennis Club. The applicant applied under Section(s) 240-23 D., 240-109 B., 240-68 A (8), 240-3 C. and 240-216 of the Code of Falmouth to raze the existing clubhouse and reconstruct two structures (clubhouse and office) connected by a 1,300 square foot deck. The existing shed will remain unchanged.

Section 240-3 C. 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 razing of the existing clubhouse and the proposed construction of the two structures with a deck connection is not substantially more detrimental than what currently exists. The Board further finds that the proposed new structures are in compliance with all setback requirements under Section 240-68 A. and B. of the Code of Falmouth. Furthermore, the Board finds that the proposed construction of two structures with a deck connection, the existing shed and four tennis courts on subject Lot 1 are in compliance with lot coverage requirements under Section 240-69 A. of the Code of Falmouth.

The Board finds that the proposed two new structures – one a club office and the other will be the clubhouse, connected by a 1,300 square foot deck – will be an enhancement of the use of property by the Tennis Club membership. The Board further finds through testimony of the applicant's attorney (Downey) that the applicant, Harbor Head Tennis Club, is a not-for-profit organization established in 1947 and has existed on subject property for many years.

The Board finds through submission of a Title 5 Inspection Report, that the existing cesspool (1 noted in the report) on subject property had passed the inspection. The Board further finds through an e-mail from the Board of Health Agent, David Carignan, that he has concerns about the addition of a second structure on the lot relative to the cesspool(s) (he noted two cesspools). The other concern stated by Agent Carignan is regarding separation of less than 20' from cesspool(s) to new structures was remedied by the applicant's attorney (Downey) informing the Board that the crawl spaces of the proposed structures will be filled-in thereby allowing a lesser setback. Furthermore, the Board finds that the building permit for proposed construction will require sign off by the Board of Health and if there is a change in the layout of the structures, the applicant will return to the Board of Appeals for approval.

Section 240-23 D. of the Code of Falmouth – "Private clubs not conducted for profit" – requires that this type of organization obtain a special permit.

The Board finds through testimony by the applicant's attorney (Downey) that the applicant, Harbor Head

Tennis Club, has existed on the subject lot for many years and was an allowed use in a residential district until 1971 when the Town voted at the Annual Town meeting (Article 49) that a non-for-profit club will require a special permit through the Board of Appeals.

Section 240-68 A. (8) of the Code of Falmouth requires a special permit from the Board of Appeals to allow an accessory structure in a front yard and that it be no closer than fifty feet (50') to the front property line.

The Board finds that the tennis courts on subject lot are located in what is considered the front yard of subject lot and that the courts existed prior to the requirement under Section 240-68 A. (8) for a special permit to be allowed in a front yard no closer than 50' to the front property line. The Board further finds that the tennis courts' location need not be addressed in this special permit as they are pre-existing nonconforming and are located no less than 100' from the front yard property line.

Section 240-109 B. of the Code of Falmouth – "Surface" – requires all parking areas, except for those serving dwellings, to be paved unless given relief by the Board of Appeals through a special permit for an alternative surface.

The Board finds that the applicant applied under Section 240-109 B. as Lot 2 (25 Old Dock Road) is used for parking by members of the Harbor Head Tennis Club and said parking area is gravel and not paved. The Board further finds that the gravel parking area has been used as such for many years and prior to this section's inception into the bylaws.

The Board finds that there was testimony by an abutter at the hearing regarding use of a megaphone and/or a public announcement system by the applicant during early hours [7am / 8 am] on a weekend day that was disturbing and disruptive. The Board finds that Attorney Ament stated that the Tennis Club would work with the abutters regarding this issue.

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 raze of existing clubhouse and the construction of two new structures connected with a deck as there are no nonconforming setbacks and lot coverage is below the maximum allowed in this residential district.
- B. The site is suitable for the proposed use by a non-for-profit organization as it has existed since prior to 1971 when the bylaw was changed to require a special permit.
- C. There will be no impact on traffic flow and safety as the intention of application is to enhance the clubhouse and office area and not to increase the number of members to the club; and there will be no change in the location of the existing driveway on site.
- 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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will be determined by the Board of Health prior to the issuance of a building permit.
- F. There are adequate utilities to subject property by virtue of an existing clubhouse on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system as the Board did not receive a referral from the Water Department for the proposed.
- G. The proposed reconstruction 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Sutherland 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 4 – 0 to Grant the Special Permit to Harbor Head Tennis Club, Inc. (herein referred to as Applicant) under Section(s) 240-3 C., 240-23 D., 240-68 A. (8), 240-109 B. and 240-216 of the Code of Falmouth to raze existing clubhouse and reconstruct two new structures with connecting deck on subject property known as 13 Nashawena Street and 25 Old Dock Road, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of existing building and construction of two new buildings and deck, setbacks, lot coverage, height of structures and use of the structures shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Proposed Clubhouse Reconstruction" prepared for Harbor Head Tennis Club for Lot 1, #13 Nashawena Street in West Falmouth, MA – Sheet 1 of 1 as drawn by Holmes and McGrath, Inc., stamped and signed by Joel R. Kubick, P.L.S. dated July 21, 2015 and with a Board date "Received" stamp of 8/3/2015;

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2. The applicant shall have the crawl spaces of the two structures (See Drawing A100 noted in Condition 1 above) filled in so that the foundation complies with septic regulations 310 CMR 15.211.

3. The deck proposed connecting the two structures approved herein shall not be enclosed. The deck shall remain open until further written approval by the Board of Appeals.

4. The lighting on the proposed structures, deck and walkway will be low level lighting so as not to interfere with any nearby abutter.

5. The applicant shall contact the Falmouth Engineering Department to discuss address for the Tennis Club (Old Dock Road or Nashawena). The applicant will then post the address in a location that is visible from the roadway.

6. 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.

7. The Applicant shall meet the requirements of the DPW Water Division.

8. 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.)

9. 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: 75-15

Applicant: HARBOR HEAD TENNIS CLUB, INC. of West Falmouth, MA

Subject Property: 13 Nashawena Street and 25 Old Dock Road, North Falmouth, MA
Map 24A, Section 07, Parcel 009, Lot 001 – (13 Nashawena)
Map 24A, Section 07, Parcel 014B, Lot 002 – (25 Old Dock Road)

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

Terrence J. Hurrie, Acting 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 75-15 Harbor Head Tennis Club, Inc. / Filed w/ Town Clerk 9/18/15