

## Zoning Board of Appeals Decisions Decisions for: 06-30-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 058-16

APPLICANT: 155 KLB NOMINEE TRUST of Falmouth, MA

OWNER: Linda Clark and Noah Totten, Trustees of 155 KLB Nominee Trust

SUBJECT PROPERTY: 155 Katharine Lee Bates Road, Falmouth, Massachusetts  
Assessor's Map: Map 38A, Section 08, Parcel 095, Lot 000

DEED/CERTIFICATE: Book 24451 / Page 121

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 13, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3, 240-51 A. (5), 240-107 B. and 240-109 B. of the Code of Falmouth to construct a four (4) unit, one-story building with parking reduction with alternate surface on subject property known as 155 Katharine Lee Bates Road, Falmouth, MA.
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 June 16, 2016.
4. The public hearing was terminated on June 30, 2016, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate members Mark Cool and Gerald Potamis sitting as voting members, voted to 5 – 0 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 Laura Moynihan 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

There were twelve (12) letters of support submitted to the file, two of which were immediate abutters. There were no letters of opposition submitted.

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

5/12/2016 Attorney Moynihan, on behalf of the applicant, submitted an application for a special permit, letter of authorization, plans (site, architectural and landscaping) and a filing fee.

5/12/2016 Attorney Moynihan submitted a letter dated February 2, 2016 from BSS Design, Inc. to Building Commissioner Eladio Gore regarding designation of a front yard (See 240-13 Definitions "Yard, front") – letter has Mr. Gore's signature noting designation of Gifford Street as front yard.

5/12/2016 Attorney Moynihan submitted drainage calculations for subject property dated May 12, 2016 – stamped and signed by Jeffrey E. Ryther, PE (consisting of four pages).

5/13/2016 Amended application – corrected section of by-law for relief on application.

6/7/2016 BSS Design, Inc. (project engineers) submitted a response to Falmouth DPW Engineering Division dated June 6, 2016 regarding "Site Plan".

6/16/2016 Attorney Moynihan submitted a 'Trip Generation Rate' to the file (traffic calculations).

#### Letters/Referrals/E-mails from Town Departments

5/13/2016 Referral submitted to the file by the Planning Department staff with the comment: The applicant filed a 'Site Plan Review' application with the Planning Board and will be on the June 7th agenda.

5/17/2016 A letter dated May 17, 2016 was submitted to the file by Lt. Mel Trott of the Falmouth Fire Rescue Department as a referral that notes the proposed building will be required to have an automatic fire sprinkler system and an automatic fire detection system that shall be monitored; and a Knox Box Key Entry System is recommended in the event of an emergency.

5/18/2016 Referral submitted to the file by the Interim Building Commissioner James Brandolini that states: Shall comply with all applicable provisions of 780 CMR State Building Code.

6/3/2016 Referral submitted to the file by Scott Schluter, PE with Town Engineering Department, that states: See attached review for Planning. (Memo attached dated 6/3/2016 to Brian Currie, Town Planner.)

6/7/2016 Referral submitted to the file by Conservation Commission Agent that states: No issues, just contain stormwater on the property.

6/16/2016 Attorney Moynihan submitted a copy of an updated 'Memo' (referral) from Engineering Department to Brian Currie, Town Planner dated 6/8/2016

6/22/2016 Attorney Moynihan submitted to the file a copy of the Planning Board's 'Site Plan Review' Decision addressed to James Brandolini, Acting Building Commissioner – dated June 22, 2016.

#### Plans submitted by Applicant/Applicant's Representative

"Site Plan – Proposed Apt Bldg at 155 Katharine Lee Bates Road Falmouth, Massachusetts" as drawn by BSS Design, Inc. that include the following drawings:

- 1) 'Existing Conditions' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS - with a Board date 'received' stamp of June 7, 2016;
- 2) 'Grading & Drainage Plan' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS and Jeffrey E. Ryther, PE – with a Board date 'received' stamp of June 7, 2016;
- 3) 'Layout Plan' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS and Jeffrey E. Ryther, PE – with a Board date 'received' stamp of June 7, 2016; and
- 4) 'Septic System & Utilities' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS – with a Board date 'received' stamp of June 7, 2016.

"Landscape Site Plan L1.0" drawn by TL Studio, Inc. dated 6/10/2016 with a Board date 'received' stamp of June 13, 2016;

"Main Level Floor Plan" drawn by Keenan & Kenny Architects, Ltd" – Drawing A1.0 dated April 11, 2016 and with a Board date 'received' stamp of May 12, 2016;

"Exterior Elevations" drawn by Keenan & Kenny Architects, Ltd" – Drawing A2.0 dated April 11, 2016 and with a Board date 'received' stamp of May 12, 2016; and

"Exterior Elevations" drawn by Keenan & Kenny Architects, Ltd" – Drawing A2.1 dated April 11, 2016 and with a Board date 'received' stamp of May 12, 2016.

Hearing – June 16, 2016:

Attorney Moynihan reviewed the history of the property, the site conditions and proposed one-bedroom

four unit building that will be one-story. She explained that the Fairwinds Clubhouse is an organization that has approximately 100 members; Friends of Fairwinds, Inc. is a non-profit organization corporation that provides the land and site for the Clubhouse to operate and the corporation is the beneficiary of the trust that owns the land [applicant]. The clubhouse has services that support individuals with mental health issues; and that the four units proposed will be to assist four members to live self-sufficient on their own. The property was purchased in 2011; the beneficiary is Friends of Fairwinds. She reviewed the parking proposed, a portion of which will have an alternative surface under Section 240-109 B. of the Code of Falmouth, as well as a reduction in parking (32 spaces reduced to 23 spaces) under Section 240-107 B. of the Code of Falmouth – if allowed by the Board of Appeals. All setbacks of the proposed building will conform; Gifford Street will be the front yard as designated by Building Commissioner Gore; and total lot coverage has been slightly reduced bringing it into conformance with no more than 65% coverage. She reviewed the landscape plan noting the privacy fence and screening of buildings; the front doors of the units open into the interior of the lot and not along Katharine Lee Bates Road. The subject property is in a downtown location with public transportation and nearby public parking. Attorney Moynihan noted that the Friends of Fairwinds operates a transportation van that transports members to and from the subject property.

The Board discussed plans and concerns with Attorney Moynihan. All concerns regarding parking, lot coverage, drainage on-site and traffic were addressed. Attorney Moynihan noted that other businesses on site are 'Nu-wave Printing', the Fairwinds Office and an office for the Road Race.

Thomas Bunker, PE explained the sidewalk detail that the Planning Board requested and the relocation of a parking space along Katharine Lee Bates Road. Mr. Bunker also explained that the revised plan showing change in drainage [leaching pits at the corner and rear parking area installed] was approved by the Engineering Department.

Attorney Moynihan explained to the Board that the application is before the Planning Board for Site Plan Review and that a decision will be made on June 21, 2016.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project.

Beatrice Bunker of 164 Katharine Lee Bates Road stated support of the project and noted that the architect designed the building to have a view scape and not have a 'mass' appearance.

The Board members discussed. Member Cool made a motion to continue the hearing to 6:00 PM on June 30, 2016 and to direct the Zoning Administrator to draft a decision in preparation of a vote. Member Murphy seconded the motion. Motion carried 5 – 0.

Hearing – June 30, 2016:

Chairman Hurrie asked Attorney Moynihan to comment on the six parking spaces located at the southwest corner of the existing building that are designated as 'Road Race' parking spaces.

Attorney Moynihan stated that the entrance for the Road Race office on subject property faces Haddon Avenue so the parking adjacent to the front entrance of the office was designated for them so that it would not appear to be 'public' parking. She explained that the Trustees are willing to change the parking signs to read 'parking for tenants of 155 Katharine Lee Bates Road only' [or something to that affect].

The Board discussed and agreed that since the application is requesting relief for a parking reduction the dedicated parking is not appropriate on site and parking sign language should reflect parking for tenants at 155 Katharine Lee Bates Road. The Board further noted that the decision from the Planning Board for 'Site Plan Review' was submitted to the file and reviewed by the Board members.

Member Cool made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Chairman 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 located at 155 Katharine Lee Bates Road in Falmouth contains 30,047 square feet of Business 2 and Business 3 zoned land (proposed building is located in Business 3 zoned portion of land). The lot is currently non-conforming due to total lot coverage exceeding the maximum 65% allowed under Section 240-69 A. of the Code of Falmouth. The subject property received a special permit in 1981 [#92-81] to allow a reduction in parking for the use that existed on said property at that time. The Friends of Fairwinds, Inc. is a non-profit organization corporation that provides the land and site for the Clubhouse to operate – the corporation is the beneficiary of the trust that owns the land [applicant]. The applicant applied under Section(s) 240-3, 240-51 A. (5), 240-107 B. and 240-109 B. of the Code of Falmouth to construct a four unit, one-story building with parking reduction and alternate surface on the property known as 155 Katharine Lee Bates Road. Each of the four units will be a one-bedroom unit. The applicant submitted a landscape plan showing an 8' privacy fence along the southeasterly most (rear) property line and landscape buffering along Katharine Lee Bates Road and Gifford Street. The drainage on subject property has been approved by the Town Engineering Department and all runoff will be maintained on site (see plan). The use of the four (4) units will be for Friends of Fairwinds as placement for individuals to learn self-sufficiency.

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 addition to the subject property of four one-bedroom units in a one-story structure is not substantially more detrimental than what currently exists. The Board further finds that through the addition of the building to the property, the applicant has reduced the lot coverage that will now be in compliance for both zoning districts, Business 2 and 3, pursuant to Section 240-69 A. of the Code of Falmouth. Furthermore, the Board finds that the proposed building meets all setbacks required under Section 240-68 A. and B. of the Code of Falmouth.

Section 240-51 of the Code of Falmouth – “Special permit uses.” states: Uses allowed on special permit from the Board of Appeals. Sub-section A. (5): Multifamily use if the Board of Appeals finds: that the public good will be served; that the business zoned area would not be adversely affected; and that the uses permitted in the zone would not be noxious to a multifamily use. The density of any approved proposal shall not exceed six units per acre.

The Board finds that the proposed will serve the public good in that the units are created to be used by individuals who will be learning self-sufficiency. The Board further finds that the existing businesses in the general area of the proposed four units, that consist of a school, library and other commercial business entities, will not be adversely impacted by the proposed four units and tenants as the responsibility of oversight for said tenants will be that of Friends of Fairwinds and tenants will also be governed by residency agreements. Furthermore, the Board finds that the uses existing on site and in the general area are not of high impact or long hours of operation that may cause an adverse effect on the individuals who will be residing in the four proposed units on subject property.

The Board finds that under Section 240-51 A. (5) of the Code of Falmouth that multifamily use should not be for more than six units per acre of land. The Board further finds that the four units proposed on subject property meets the criteria of 240-51 A. (5) as the subject property consists of 30,047 square feet of land wherein four units based on six units per acre would require 29,040 square feet of land. Furthermore, the bylaw is silent as to what or if other uses may exist on subject property and therefore not under consideration within this bylaw.

Section 240-107 of the Code of Falmouth – “Parking Reductions” – Sub-section B states: Reduction by special permit. The required number of spaces may be further reduced below that indicated below [Section 240-108 “Table of Minimum Requirements”] on special permit from the Board of Appeals upon the Board’s determination that special circumstances, such as shared use of a parking lot by activities having different peak demand times, render a lesser provision adequate for all parking needs. For uses allowed only on a special permit, the special permit granting authority may similarly require a larger number of parking spaces to be provided than indicated if necessary to service anticipated demand.

The Board finds that the applicant is requesting to reduce parking on site currently existing at 32 spaces to 23 parking spaces. The Board further finds that the existing parking, according to testimony by the

applicant's representative, meets the criteria of 'shared parking' and the 23 spaces on site are sufficient and that there is public parking all along Katharine Lee Bates Road. Furthermore, the Board finds that 6 of the 23 parking spaces are designated parking for one tenant and thereby not part of a 'shared parking use'. However, testimony by the applicant's representative was that the applicant is willing to change the parking signs to indicate that said parking will be for 'tenants of 155 Katharine Lee Bates Road only'.

Section 240-109 of the Code of Falmouth – "Parking area design and location" – Sub-section B. states: Surface. All required parking areas, except those serving single-family residences, shall be paved, unless exempted on special permit from the Board of Appeals for cases such as seasonal or periodic use where an alternative surface will prevent dust, erosion, water accumulation or unsightly conditions. No such required driveway or parking area shall be designed or constructed so as to cause stormwater drainage to flow onto any roadway.

The Board finds through testimony by the applicant's project engineer that a portion of the land located south of the main parking area will be alternate surface (gravel) and will be used for a turn-around area and will have two leaching pits and a catch basin to maintain all stormwater flow onto site (see Drawing B24-12 "grading & Drainage Plan" submitted). The Board further finds that along with the alternate surface in this area of the lot, the applicant will grade parking area to insure all stormwater runoff will flow to the catch basin/leaching pits. Furthermore, the Board finds that this area of the lot is an appropriate area for alternate surface for use noted herein.

The Board finds through submission of documentation to the file that the Building Commissioner, under Section 240-13 "Yard, front" has designate Gifford Street as the front yard and Katharine Lee Bates Road as the side yard. The Board further finds that due to this designation by the Building Commissioner, the proposed building meets all setback requirements under Section 240-68 A. and B. of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed construction of four one-bedroom units on subject property 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 four (4) one-bedroom units as the applicant, through this application, has made the lot coverage compliant with Section 240-69 A. of the Code of Falmouth and the proposed building for the four units will meet all required setbacks under Section 240-68 A. and B. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned Business 2 and Business 3 and under Section 240-51 A. (5) of the Code of Falmouth, multifamily units are allowed by special permit from the Board of Appeals.
- C. There will be no impact on traffic flow and safety as the four units will minimally increase traffic flow due to Friends of Fairwinds picking up and dropping off tenants of the four proposed one-bedroom units; the existing driveway will remain as existing.
- D. The visual character of the subject property will not be impacted as the proposed building was designed to be in character with the general area and as a one-story so as not to impact the street scape; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The proposed septic system and design for the four proposed units will require approval and sign off by the Board of Health prior to the issuance of a building permit.
- F. There are adequate utilities to tie into on subject property. However, the Applicant will have to contact the Town Water Department regarding updating of water system.
- G. The proposed four-unit building discussed and represented herein will have no effect on the supply of affordable housing in Falmouth as the units will be designated to be used by the members of the Friends of Fairwinds.
- H. The Site Plan Review required by the Planning Board was submitted to the file, reviewed and taken into consideration by the Board of Appeals.
- 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 that will be on the Town's housing inventory.

The Board of Appeals has weighed the effects of the proposed four-unit building on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Cool made a motion to Grant the Special Permit with conditions as written and amended herein. Member Murphy 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 a Special Permit to 155 KLB Nominee Trust (herein referred to as Applicant) under Section(s) 240-3, 240-51 A. (5), 240-107 B. and 240-109 B. of the Code of Falmouth to construct a four (4) unit, one-story building with parking reduction and alternate parking surface on subject property known as 155 Katharine Lee Bates Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location and construction of the four-unit building, all setbacks, lot coverage, height of building, parking spaces, alternate surface area and use of the four units shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

"Site Plan – Proposed Apt Bldg at 155 Katharine Lee Bates Road Falmouth, Massachusetts" as drawn by BSS Design, Inc. that include the following drawings:

- 1) 'Existing Conditions' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS - with a Board date 'received' stamp of June 7, 2016;
- 2) 'Grading & Drainage Plan' dated May 11, 2016/revision date of 6/6/16, stamped and signed by Thomas J. Bunker, PLS and Jeffrey E. Ryther, PE – with a Board date 'received' stamp of June 7, 2016;
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"Exterior Elevations" drawn by Keenan & Kenny Architects, Ltd" – Drawing A2.0 dated April 11, 2016 and with a Board date 'received' stamp of May 12, 2016; and

"Exterior Elevations" drawn by Keenan & Kenny Architects, Ltd" – Drawing A2.1 dated April 11, 2016 and with a Board date 'received' stamp of May 12, 2016.

2. There shall be no more than four, one-bedroom units allowed on subject property.

3. The units will be used for Fairwinds' members and not to be rented out to any outside individuals.

4. The six (6) parking spaces located off Haddon Avenue at the southwest corner of the existing building on subject property shall not be posted or signed as designated for one tenant and said signs shall be changed to read something similar to "Parking for tenants of 155 Katharine Lee Bates Road Only". The applicant shall submit to the Board of Appeals language to be put on the six (6) parking spaces. Approval by the Board and change of language on the parking signs shall be completed prior to issuance of a Building Permit.

5. 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.

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

7. 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.)

8. 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: 058-16

Applicant: 155 KATHARINE LEE BATES NOMINEE TRUST of Falmouth

Subject Property: 155 Katharine Lee Bates Road, Falmouth, MA  
Map 38A, Section 08, Parcel 095, 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: 5 – 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, 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 # 058-16 155 KLB Nominee