

Zoning Board of Appeals Decisions Decisions for: 04-14-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 023-16

APPLICANT/OWNER(S): CONOR McLAUGHLIN of West Bridgewater, MA

SUBJECT PROPERTY: 88 Scranton Avenue, Falmouth, Massachusetts
Assessor's Map: Map 47B, Section 09, Parcel 004, Lot 035

DEED/CERTIFICATE: Cert. 137157 – Lot 34 Plan 7639-4, Lot 35 Plan 7639-5

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 23, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the existing deck, enclose existing porch, modify ramp and make alterations to parking on subject property known as 88 Scranton Avenue, 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 April 14, 2016.
4. The public hearing was terminated on April 14, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy 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 Zoning Consultant Stephen O. McKenzie 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

None

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

None

Letters/Referrals/E-mails from Town Departments

2/25/2016 Referral submitted to the file by the Marine Environmental Services with no comment.

3/1/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

3/10/2016 Referral submitted to the file by Health Agent Carignan that states: No objections to the proposal generally, but a lack of architect's plans does not allow further comment.

3/18/2016 Referral submitted to the file by Building Commissioner Gore states: Parking needs Planning

Board approval.

3/22/2016 Engineering submitted to the file a memo addressed to the Planning Board (Town Planner Currie) on comments regarding Site Plan Review by the Planning Board.

4/8/2016 Engineering submitted to the file a memo to the Planning Board (Town Planner Currie) regarding revised plans by the applicant for Site Plan Review.

4/12/2016 ZBA staff submitted copies of building permits (past permits), alcohol license, occupancy 4/13/2016 permit regarding subject property.

4/13/2016 Planning Department submitted a copy of the 'Site Plan Review' Decision addressed to the Building Commissioner, issued March 13, 2016 for proposed project.

Plans submitted by Applicant/Applicant's Representative

"Floor Plan and Deck Expansion 2016" prepared for ZBA & Planning Approvals – The Boathouse Restaurant at Pier 37 drawn by Brown Lindquist Fenuccio & Raber consisting of:

- Drawing A-ZBA 'Floor & Deck Plan' dated 2/16/2016 with a Board date 'received' stamp of February 23, 2016;
- Drawing A2.1 'Exterior Building Elevations (3/16" = 1'-0")' dated 3/28/2016 with a Board date 'received' stamp of April 4, 2016;
- Drawing A2.2 'Exterior Building Elevations (3/16" = 1'-0")' dated 3/28/2016 with a Board date 'received' stamp of April 4, 2016;
- Drawing A2.2.1 'Exterior Building Elevations (3/16 = 1'-0")' dated 3/28/2016 with a Board date 'received' stamp of April 4, 2016;
- Drawing A2.3 'Exterior Building Elevations (3/16" = 1'- 0")' dated 3/28/2016 with a Board date 'received' stamp of April 4, 2016; and
- Drawing A2.4 'Exterior Building Elevations (3/16" = 1'- 0")' dated 3/28/2016 with a Board date 'received' stamp of April 4, 2016.

"Plan of Existing Conditions at The Boathouse Restaurant at Pier 37 88 Scranton Avenue Falmouth, Massachusetts" drawn by BSS Design, Inc. dated Feb. 22, 2016, stamped and signed by Thomas J. Bunker, PLS with a Board date 'received' stamp of Feb. 23, 2016; and

"Proposed Deck Expansions at The Boathouse Restaurant at Pier 37 88 Scranton Avenue Falmouth, Massachusetts" drawn by BSS Design, Inc. dated Feb. 22, 2016, stamped and signed by Thomas J. Bunker, PLS with a Board date 'received' stamp of Apr. 6, 2016.

Applicant submitted an Estimate for proposed grading and landscaping on subject property – 3 photos attached and colored in showing proposed landscaping plans – all with a Board date 'received' stamp of April 11, 2016.

Hearing:

Stephen McKenzie introduced the applicant, Conor McLaughlin, and Contractor, Brian Bourque, who are present and available to answer questions. Mr. McKenzie reviewed the existing conditions and proposed additions to the rear deck and front façade of the building – enclosing a portion of the existing deck and improving the egress to front and back access to building. He reviewed the proposed traffic flow, parking, valet parking and landscaping for the proposed changes on site. Some of the parking will be 'shared' parking on adjacent lot. Mr. McKenzie explained that the subject property and surrounding lot is family owned and there is an agreement for parking on adjacent lots. Lot coverage by structures is conforming and will be increased from 16.36% to 18.31%; the total lot coverage is nonconforming at 80.66% and will be slightly decreased to 80.38%. The subject property is on Town sewer. Mr. McKenzie informed the Board that the Planning Board issued a 'Site Plan Review' Decision this week and submitted a copy for the Board's review. He further explained that the applicant was recently before the Board of Selectmen for his liquor license, wherein a couple of Selectmen congratulated Mr. McLaughlin on his endeavors with his restaurant.

The Board discussed plans with Mr. McKenzie asking for clarification on number of parking spaces, valet parking, handicap spaces at front entrance of building and agreement for parking on adjacent lots. Mr.

McLaughlin, Mr. McKenzie and Mr. Bourque addressed all concerns and questions.

Chairman Bielan stated that an agreement regarding 'shared' parking should be submitted to the file.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

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

Chairman Bielan 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 88 Scranton Avenue contains 67,000 square feet of Marine zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the existing deck, enclose existing porch, modify existing ramp and make alterations to parking and landscape on subject property. The total lot coverage on subject property exceeds the 70% maximum allowed pursuant to Section 240-69 A. of the Code of Falmouth. The use of the existing structure on subject property has been that of a restaurant for many years and the applicant has made and continues to make improvements and updates to the building. The applicant's family owns subject property and adjacent boat marina properties and have an agreement regarding parking for the restaurant use on subject property. Testimony was that the applicant worked with the Fire Department and Building Department to ensure the safest egress to the building.

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 addition to the existing rear deck, improvements to the front entrance, improved landscaping and alterations to parking on subject property will not be substantially more detrimental than what currently exists. The Board further finds that the proposed changes to the front of the building, improving the egress and enclosing a portion of the deck, are improvements to the safety of customers and utilization of the building. Furthermore, the Board finds that the valet parking is suitable for the site on a given schedule and through an agreement between the applicant and adjacent property owner(s).

The Board finds that the total nonconforming lot coverage will be slightly improved through the changes to the site as discussed herein. The Board further finds that the proposed improvements to the parking and landscaping will be an enhancement to the subject property and will further enhance the view from the roadway.

The Board finds that there is sufficient parking, including valet parking, for the use on subject property. The Board further finds through testimony by the applicant's representative that an agreement between applicant and adjacent property owner(s) regarding shared parking will be made available to the Board of Appeals.

The Board finds that the Planning Board reviewed the changes to subject property under 'Site Plan Review' and forwarded a Decision to the Building Commissioner with conditions. The Board of Appeals reviewed the 'Site Plan Review' Decision and took said Decision into consideration for their approval of the proposed.

In addition to the above findings, the Board finds that the proposed changes to the site and structures 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 deck addition and alterations to the front of the building's egress as there are no new nonconformities created and the nonconforming total lot coverage will be slightly decreased.

- B. The site is suitable for the existing use of a restaurant within the Marine zoned district and plans show improvements to the site for public use and safety.
- C. There will be no impact on traffic flow and safety as the restaurant has existed on site for several years; and there is no change in the location of the existing driveways to access 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; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The subject property is attached to Town sewer.
- F. There are adequate utilities to subject property by virtue of existing uses on subject property.
- G. The proposed alterations to the structure and improvements to the site discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was Site Plan Review by the Planning Board and a copy of the Decision is on file with 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.

The Board of Appeals has weighed the effects of the proposed additions to the existing structures on site and the improvement of site conditions 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 Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Conor McLaughlin (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the existing deck, enclose existing porch, modify ramp and alterations to parking on subject property known as 88 Scranton Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition to the rear deck, modification of ramp to deck, enclosure of front deck, parking, landscaping and use of subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Floor Plan and Deck Expansion 2016" prepared for ZBA & Planning Approvals – The Boathouse Restaurant at Pier 37 drawn by Brown Lindquist Fenuccio & Raber consisting of:
 - Drawing A-ZBA `Floor & Deck Plan` dated 2/16/2016 with a Board date `received` stamp of February 23, 2016;
 - Drawing A2.1 `Exterior Building Elevations (3/16" = 1'-0")` dated 3/28/2016 with a Board date `received` stamp of April 4, 2016;
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 - Drawing A2.3 `Exterior Building Elevations (3/16" = 1'- 0")` dated 3/28/2016 with a Board date `received` stamp of April 4, 2016; and
 - Drawing A2.4 `Exterior Building Elevations (3/16" = 1'- 0")` dated 3/28/2016 with a Board date `received` stamp of April 4, 2016.
- "Plan of Existing Conditions at The Boathouse Restaurant at Pier 37 88 Scranton Avenue Falmouth, Massachusetts" drawn by BSS Design, Inc. dated Feb. 22, 2016, stamped and signed by Thomas J. Bunker, PLS with a Board date `received` stamp of Feb. 23, 2016; and
- "Proposed Deck Expansions at The Boathouse Restaurant at Pier 37 88 Scranton Avenue Falmouth, Massachusetts" drawn by BSS Design, Inc. dated Feb. 22, 2016, stamped and signed by Thomas J. Bunker, PLS with a Board date `received` stamp of Apr. 6, 2016. [NOTE: Revised stamped copy to ZBA prior to Occupancy or final.]

- Applicant submitted an Estimate for proposed grading and landscaping on subject property – 3 photos attached and colored in showing proposed landscaping plans – all with a Board date ‘received’ stamp of April 11, 2016.

2. The applicant shall submit to the Board of Appeals a revised plan of “Proposed Deck Expansions”, stamped and signed by the Land Surveyor, prior to the issuance of an Occupancy Permit or final sign-off by the Board of Appeals, whichever may come first.

3. The applicant shall submit a signed Agreement between the applicant and the adjacent property owner(s) regarding shared parking for the restaurant use on subject property. The agreement should include areas of parking on each lot and time frame of Agreement. The Agreement shall be submitted to the Board of Appeals prior to the issuance of a building permit.

4. The Board of Appeals herein adopts the conditions stated in the ‘Site Plan Review’ Decision by the Planning Board.

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. 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.)

7. 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: 023-16

Applicant: CONOR McLAUGHLIN of West Bridgewater, MA

Subject Property: 88 Scranton Avenue, Falmouth, Massachusetts
Map 47B, Section 09, Parcel 004, Lot 035

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, 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 023-16 McLaughlin/ Filed w/Town Clerk 4/27/16