

Zoning Board of Appeals Decisions Decisions for: 04-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 029-16

APPLICANT/OWNER(S): LUSCOMBE AVE LLC, BETH COLT MANAGING MEMBER

SUBJECT PROPERTY: 29 Railroad Avenue, Woods Hole, Massachusetts
Assessor's Map: Map 51A, Section 01, Parcel 009, Lot 000

DEED/CERTIFICATE: Book 27802 / Page 347

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 4, 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 convert the third floor from private to public use allowing for additional seating of existing restaurant on subject property known as 29 Railroad Avenue, Woods Hole, 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 April 28, 2016.
4. The public hearing was terminated on April 28, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chair, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis sitting as voting member, 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 present at the hearing and 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)

3/4/2016 Applicant submitted, application, fees, plans and information regarding request
3/4/2016 Applicant submitted current occupancy certificate for restaurant operation, and a copy of the Architectural Access Board Decision dated 2/24/2016 with condition of no parties or functions to be held on third floor.

3/7/2016 Applicant submitted a copy of the 'Revocable Grant of Easement' between Town and subject property for encroachment of structure into Town property.

Letters/Referrals/E-mails from Town Departments

3/7/2016 ZBA staff submitted to the file a copy of Special Permit #69-88 that allowed alteration of subject structure in 1988.

3/8/2016 Referral submitted to the file by the Planning Department staff with no comment.

3/10/2016 Referral submitted to the file by the Marine & Environmental Services with no comment.

3/10/2016 ZBA staff submitted to the file a copy of Special Permit #82-94 that allowed changes to the existing restaurant/lounge operation.

3/10/2016 Referral submitted to the file by the Historic District Commission with the comment: The HDC does not have jurisdiction over interior changes of buildings within the Historic District unless changes effect the exterior design of the building.

3/11/2016 Referral submitted to the file by Building Commissioner Gore that states: They have approval from AAB for third floor.

3/15/2016 Referral in the form a letter submitted to the file by Falmouth Fire Rescue Department commented: I have reviewed the plans for this project and any renovations must conform to the applicable sections of the Fire and Building Codes. – signed by Lt. Mel Trott

4/7/2016 Referral submitted to the file by the Engineering Department (S. Schluter) states: This application was reviewed only for impacts to public right of ways and public utilities. Luscombe Ave and Railroad Ave are Public right of ways in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

4/8/2016 Referral scanned to the ZBA office by Board of Health Agent Carignan with no comment.

Plans submitted by Applicant/Applicant's Representative

"Quicks Hole Tavern 29 Railroad Av. Woods Hole, Massachusetts" drawn by Cross Cape Architecture, P.C. consisting of: Cover Page - 'Occupancy Change' dated 3/3/2016, Drawing A1.0 'Basement Floor Plan' dated 3/3/2016, Drawing A1.1 'First Floor Plan' dated 3/3/2016, Drawing A1.2 'Second Floor Plan' dated 3/3/2016 and Drawing A1.3 'Third Floor Plan' dated 3/3/2016 – all with a Board date 'received' stamp of 3/4/2016.

"Plan of Land" prepared for Luscombe Avenue LLC in Woods Hole, Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated Mar. 4, 2016 and with a Board date 'received' stamp of Mar. 4, 2016.

Hearing:

Beth Colt informed the Board that she purchased the subject property in 2013[previously known as 'The Leaside'] and currently operates a restaurant on the first and second floors; the third floor was used by previous owner as an apartment with no kitchen. She reviewed the existing floor plans and occupancy of the first floor and second floor and the proposed third floor use for 49 seats to increase the existing restaurant seating. The subject property is serviced by the Town sewer. Ms. Colt noted that she has received a Variance approval from the Board of Building Regulations and Standards to use the third floor for seating without the use of an elevator. She further stated that she would like to increase the seating on the first floor from 52 to 75 seats and increase seating on the second floor from 68 to 77 seats. Ms. Colt reviewed the bylaw regarding parking in a B1 district.

The Board asked questions and stated concerns with the proposed increased seating/occupancy on first and second floor, additional seating on third floor, fire escape and parking due to increase of seats. Member Foreman noted that the request is a 70% increase in the seating for this restaurant and that there is no plan for parking to service this increase.

Ms. Colt stated that she thought that uses in a Business 1 District did not require parking.

Zoning Administrator Budrow read from Section 240-104 "Waiver of parking requirements." and Section 240-106 "Performance requirements." and noted that no parking requirement is in the downtown Business 1 District [240-104]; and that any increase in parking demand created by additions or change must have off-street parking provided [240-106]. Board discussed very limited public parking in Woods Hole village.

Ms. Colt stated that a majority of the customers come off the ferry or live in Woods Hole and that she has to turn people away due to lack of seating. She stated that the request for increase is for standing room only and not additional seating.

Member Foreman asked Ms. Colt to reduce the occupancy proposed on first and second floor. The Board and Ms. Colt discussed request and lack of parking.

Liz Catipovic, Project Architect, reviewed the capacity for seating on each floor and the formula used to calculate.

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

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

Chairman Foreman 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 29 Railroad Avenue in Woods Hole contains 1,600 square feet of Business 1 zoned land and a small piece of the subject property is located within the Historic District Overlay. The structure completely covers the subject property and encroaches onto Town property on two sides of subject property and onto abutting lots on other two sides of the property. The subject property has a "Revocable Grant of Easement" from the Town regarding encroachment on to Town property. The existing third floor of the structure has been used as an apartment by the previous owner. The applicant would like to convert the habitable space into seating – 49 seats – for the existing restaurant operation on site [Quick's Hole Tavern]; and increase occupancy (standing room only) on first and second floors.

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 through applicant's testimony, referral by the Building Commissioner and written decision by the Commonwealth of Massachusetts Department of Public Safety – Architectural Access Board dated Feb. 24, 2016, that the third floor use as requested for additional seating does not require an elevator. The Board further finds that the proposed use and renovation of the third floor on subject property will not change the exterior of said structure. Furthermore, the Board finds through applicant's testimony that the third floor is hooked to the building sprinkler fire system.

The Board finds that the proposed conversion of the third floor from private habitable space to 49 public seats for the existing restaurant operation on subject property does not appear to be substantially more detrimental than what exists. The Board further finds that the restaurant operation on subject property existed prior to zoning and the applicant inherited the issue of very limited public parking in the village of Woods Hole. Furthermore, the Board finds that the additional seating on the third floor will allow for more patrons that sometimes, according to applicant's testimony, get turned away due to lack of seating.

The Board finds that the proposed plans for conversion of third floor use improves the egress to and from third floor to second floor. The Board further finds that the emergency egress from the third floor is interior and fire rated.

The Board finds through testimony by the applicant that she is amenable to reduce the occupancy on the first floor from 70 to 68 patrons and from 75 to 70 patrons on the second floor; third floor will be for 49 seats with no standing room. The Board finds testimony by the applicant that the increase in occupancy for the first and second floor is for standing room only – no additional seating on the first two floors.

The Board finds through submission of information to the file that the Fire Department makes yearly

inspections of the premises for any public safety or code violations. The Board further finds through submission of a referral from the Falmouth Fire Rescue Department that any change or alteration to premises must meet applicable building and fire codes.

In addition to the above findings, the Board finds that the proposed use of the third floor of the existing structure 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 increase in seating as it is all interior change and no exterior change.
- B. The site is suitable for the proposed use as the property is Business 1 and has been used as a restaurant prior to zoning (ca 1925).
- C. There may be no impact on traffic flow and safety as the restaurant has existed in the Woods Hole Village for many years with very limited public parking and the majority of patrons are tourists and/or village residents.
- D. The visual character of the subject property will be unchanged with no impact on the neighborhood's visual character or any impact on a view or vista from the roadway.
- E. The subject property is serviced by the Town sewer.
- F. There are adequate utilities to subject property by virtue of an existing restaurant operation on site.
- G. The proposed conversion of the third floor 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.

The Board of Appeals has weighed the effects of the proposed application to convert third floor of the existing structure for 49 seats and increase occupancy on first and second floors 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 Potamis made a motion to Grant the Special Permit with conditions. 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 the Special Permit to Luscombe Ave LLC – Beth Colt Managing Member (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to convert the third floor from private to public use to allow for additional seating for exiting restaurant on subject property known as 29 Railroad Avenue, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

1. The use of the third floor of existing structure shall be converted from private to public use and contain no more than 49 seats on said floor – occupancy shall be 49.
2. There shall be no standing room allowed on the third floor.
3. Occupancy on the first floor shall be 68 and seating shall remain at 50 seats.
4. Occupancy on the second floor shall be 70 and seating shall remain at 52 seats.
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: 029-16

Applicant: LUSCOMBE AVE LLC, BETH COLT MANAGING MEMBER
of Woods Hole, MA

Subject Property: 29 Railroad Avenue, Woods Hole, MA
Map 51A, Section 01, Parcel 009, 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, 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 026-16 / Colt / Filed w/Town Clerk 5/11/16