

Zoning Board of Appeals Decisions Decisions for: 10-27-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 095-16

APPLICANT/OWNER(S): MARINER DEVELOPERS, LLC of Falmouth, MA

SUBJECT PROPERTY: 444 North Falmouth Highway, North Falmouth, Massachusetts
Assessor's Map: Map 05, Section 07, Parcel 004, Lot 000

DEED/CERTIFICATE: Book 14036 / Page 143

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 31, 2016, the applicant applied to the Zoning Board of Appeals for Modification of Special Permit #79-02 pursuant to Section(s) 240-3 C. of the Code of Falmouth to convert existing office space on lower level of building into three residential apartments on subject property known as 444 North Falmouth Highway, North 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 October 6, 2016.
4. The public hearing was terminated on October 27, 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 Stephen O. McKenzie, Zoning Consultant, who reviewed and discussed with the Board, the proposed plans to convert existing office space on lower level into three apartment units.
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)

08/31/2016 Stephen O. McKenzie submitted, on behalf of the applicant, an application, a narrative in letter form dated August 30, 2016, a letter of authorization, fee, plans, copy of Special Permit 79-02, and a copy of MHP Income levels for affordable units.

09/06/2016 E-mail from Stephen O. McKenzie in response to Falmouth Fire Rescue Department referral noting that applicant is amenable to Fire Rescue Department's requirement.

09/27/2016 Letter from Stephen O. McKenzie dated September 27, 2016 with four sets of proposed floor plans for dwelling units and building elevations.

Letters/Referrals/E-mails from Town Departments

09/01/2016 Referral was submitted to the file from Conservation Commission with no comment

09/06/2016 Referral was submitted to the file from the Falmouth Fire Rescue Department with the comment: Life Safety Systems will need to be modified for new use and brought up to current code.

09/06/2016 Referral was submitted to the file from Marine & Environmental Services with no comment

09/06/2016 Referral was submitted to the file from the Town Assessor with no comment

09/06/2016 Referral was submitted to the file from the Planning Department staff with no comment

09/09/2016 Referral was submitted to the file from the Engineering Department (S. Schluter) with standard engineering comments regarding impacts on public right of ways and public utilities; and any change to public utilities would require permission from appropriate town departments; no stormwater runoff to other properties or roadways; and noted that there is no parking tabulation for proposed change in use on subject property.

Plans submitted by Applicant/Applicant's Representative

"Site Plan" prepared for Mariner Developers, LLC in North Falmouth, MA – Sheet 1 of 4 as drawn by Holmes and McGrath, Inc. dated March 5, 2002 with a final revision date of 8/13/2003 – stamped and signed by Michael B. McGrath, PLS and with a Board date 'received' stamp of August 31, 2016;

"1,229 SF Office of Dr. William H. Braund Falmouth, MA" – 'Proposed Layout' Sheet 2 of 2 drawn by Patterson Dental Supply, Inc. dated 01/30/2003 (Existing Dental Office) with a Board date received stamp of August 31, 2016;

"Lower, Main & Upper Level Floor Plans" drawn by Rescom Architectural, Inc. – Drawing A-1 dated 5/28/02 (revised 6/25/02) (Existing floor plans) with a Board date 'received' stamp of August 31, 2016;

"Lower Level Floor Plan" – Drawing A1 drawn by Rescom Architectural, Inc. dated 8/8/2016 – revised 8/17/2016 (proposed lower level floor plan – previous dental office) and with a Board date 'received' stamp of August 31, 2016; and

"Elevations" – Drawings A2 and A3 by Rescom Architectural, Inc. dated 8/8/2016 – revision date of 8/17/2016 and with a Board date 'received' stamp of September 27, 2016.

Hearing:

Mr. McKenzie reviewed the existing site and building use plans as well as the proposed request to convert two offices located on the lower level (one a dental office) of the existing building into three apartment units. He reviewed the history of the special permit (#79-02) granting the existing three one-bedroom units existing on the second level and the offices located on the main level. He reviewed the existing parking area that consists of 56 parking spaces, two of the spaces are currently not utilized due to a parking reduction allowed in previous permit. Mr. McKenzie explained that because of the change in use from commercial office space to residential units with a total of 4 bedrooms, there is reduced need of three (3) existing parking spaces. He noted that there is an existing septic system on site that will not require an upgrade in capacity as flow for residential unit is less than that of a commercial office space use.

The Board discussed plans with Mr. McKenzie and asked questions regarding parking and dumpster location. All concerns and questions were addressed.

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

Sandra Bernstein of 464 North Falmouth Hwy, Unit 2 stated concern with the unsightliness of dumpster located in the northwest corner of subject property that she can see from her condominium unit. She asked for buffering or relocation of that dumpster.

Peter Nielsen of 17 Edgerton Drive stated no concern with proposed plan, but agreed that it would be

good to screen the dumpster that abutter spoke of.

Board discussed with Mr. McKenzie screening of the dumpster area and parking reduction of one space to better accommodate the screening for dumpster area. Mr. McKenzie stated that the applicant would be amenable to said change.

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 444 North Falmouth Highway contains 42,485 square feet of Light Industrial A zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to convert existing office space on the lower level into three residential apartments on subject property. The existing restaurant structure on subject property has a nonconforming setback to the southerly side yard property line of less than 35' pursuant to Section 240-68 C. of the Code of Falmouth. The subject property was granted Special Permit #5-83 for construction of an addition to existing building on the site for the sale of feed and grain on subject property (attached to existing restaurant structure); Special Permit #36-95 allowed the construction of an addition to the restaurant building on subject property as a foyer and ice cream counter; and Special Permit #79-02 was granted to construct a new (second) building on site to be used for office space with three apartment units on the second level (3 levels – lower, main and second). The proposed three units discussed herein will be in addition to the existing three units on the second level making the total number of apartments on subject property six (6). In light Industrial A zoned district, under Section 240-57 D. (3) [Multi-family use in LIA]: The density of any approved proposal shall not exceed six units per acre. An acre is 43,560 square feet – subject property is 42,485 square feet in size. There are 54 parking spaces on site with two additional areas shown on plan that can be parking spaces (56 spaces total).

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 conversion of two existing office spaces and a storage area on the lower level of the building into three apartments [1 two-bedroom and 2 one-bedroom units] within the pre-existing nonconforming existing structure on subject property shall not be more substantially detrimental than what currently exists. The Board finds that the proposed plan to convert office space into apartment units will not increase the existing nonconforming setback and will not create any new dimensional nonconformity under Sections 240-68 and 240-69 of the Code of Falmouth. Furthermore, the Board finds that there will be minimal changes to the exterior of the building creating proper egress for the proposed apartment units, none of which increase the footprint or the height of the existing building; and said changes will not affect the overall character of the building.

The Board finds that the existing subject building had a dental office, office suite and a storage area on lower level – herein requested to be converted to three apartment units; two office suites and a lobby on the main level and three one-bedroom units on the second level. The Board further finds that the three existing apartment units on the second level of the subject building were permitted by Special Permit #79-02 with a condition that they not be rented for less than one year and that there will be no sub-letting of a unit.

The Board finds that there are three existing one-bedroom apartments on the second level of the subject building and with the three proposed apartments on the lower level, two of which will be one-bedroom apartments and one will be a two-bedroom apartment – there will be a total of six (6) apartments that will have a total bedroom count of seven on subject property. The Board further finds that under Section 240-57 of the Code of Falmouth – "Special permit uses." [Light Industrial A Districts – Article XI] – subsection D. allows multi-family use if the Board finds that 1) the public good will be served, 2) the

industrial zoned land will not be affected and 3) that uses permitted will not be noxious to a multifamily use which shall have a density of no more than six units per acre [43,560 sf area]. The subject property consists of 42,485 square feet which equals 5.78 units and the Board finds that the lack of 2% of land on subject property to be de minimus, thereby allowing the total of six units on subject property.

The Board finds that the existing parking spaces [56 total – 54 actual] are sufficient for the existing uses on subject property and that some spaces may be shared by uses on site having different peak demand times. The Board further finds that one of the existing parking spaces in the northwest corner of the lot, space #25 shown on the plan submitted, may be eliminated in order to better accommodate the dumpster and additional screening for the dumpster as testimony by an abutter to the subject property stated the dumpster is visible from her dwelling and unsightly. Furthermore, the Board finds that there was no landscape plan submitted and would like applicant to create a landscape plan showing the improved dumpster area with green scape screening. The applicant shall prepare a landscape plan and submit it to the Board for approval of said plan (including dumpster area screening) prior to the issuance of a building permit. The Board noted that based on the proposed change in the use of the building, parking requirement may be reduced by three parking spaces.

The Board finds that there are two existing buildings on the subject property, one being a restaurant that has existed for many years and the second being the subject building that was created in 2002 and has commercial office space and apartment units. The Board further finds that the two buildings and their uses do not conflict and co-exist well and that parking on subject property is more than adequate.

The Board finds according to testimony by the applicant's representative that the rent amount for the proposed units will be less than the DHCD guidelines for affordable housing. Testimony was that the existing three apartments on subject property are currently being rented from \$850 to \$950 as compared to the standard of \$1,100 for a one-bedroom under 2016 DHCD guidelines.

The Board finds through testimony by the applicant's representative that the intent of the applicant is to immediately create two of the units [one one-bedroom unit and one two-bedroom unit] within what has been the dental office and create the third apartment unit on the lower level within the next five (5) years. It is the Board's understanding that the second office space on lower level is currently being used by the restaurant on subject property and when that use is no longer needed the applicant will create the third apartment unit approved herein.

In addition to the above findings, the Board finds that the proposed conversion of office space to three apartment units discussed herein 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 change in use of space as there is no change to the existing footprint of the building, no change in existing nonconforming setback, no new nonconforming setbacks and lot coverage will be unchanged and remain in compliance.

B. The site is suitable for the proposed use as the property is zoned Light Industrial A and multi-family units are allowed by special permit and existing commercial uses are by-right.

C. There will be no impact on traffic flow and safety as there is minimal increase in the trips generated to and from the site due to the change of use of the lower level and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be unchanged 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. A sewage disposal system is in place and will be reviewed by the Board of Health for change of use discussed herein prior to issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing uses on site.

G. The proposed conversion from office space to apartment units discussed and represented herein will have no effect on the affordable housing inventory for the Town of Falmouth, however, the three units approved herein will create new housing units that will be affordable based on rents cited by the applicant's representative.

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. See G. above.

The Board of Appeals has weighed the effects of the proposed conversion of office space to three apartment units 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 Van Keuren 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 modifying Permit #79-02 to Mariner Developers, LLC (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to convert existing office space on lower level into three residential apartments in a building on subject property known as 444 North Falmouth Highway, North Falmouth, Massachusetts.

1. The conversion from office space on the lower level of the subject building into three apartment units, parking, setbacks, lot coverage and use of building spaces shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan" prepared for Mariner Developers, LLC in North Falmouth, MA – Sheet 1 of 4 as drawn by Holmes and McGrath, Inc. dated March 5, 2002 with a final revision date of 8/13/2003 – stamped and signed by Michael B. McGrath, PLS and with a Board date 'received' stamp of August 31, 2016;
- "1,229 SF Office of Dr. William H. Braund Falmouth, MA" – 'Proposed Layout' Sheet 2 of 2 drawn by Patterson Dental Supply, Inc. dated 01/30/2003 (Existing Dental Office) with a Board date received stamp of August 31, 2016;
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- "Lower Level Floor Plan" – Drawing A1 drawn by Rescom Architectural, Inc. dated 8/8/2016 – revised 8/17/2016 (proposed lower level floor plan – previous dental office) and with a Board date 'received' stamp of August 31, 2016; and
- "Elevations" – Drawings A2 and A3 by Rescom Architectural, Inc. dated 8/8/2016 – revision date of 8/17/2016 and with a Board date 'received' stamp of September 27, 2016.

2. The applicant is required herein to submit a landscape plan to the Board of Appeals for administrative approval by the Board prior to the issuance of a building permit, that shall show proposed landscaping plan that notes the improvement to the dumpster location in the northwest corner of the lot by eliminating parking space #25 and additional screening of said dumpster.

3. The applicant shall convert the office space on the lower level that was a dental office into two apartment units – one one-bedroom unit and one two-bedroom unit. The applicant will have no more than five (5) years to convert the second office space on the lower level, currently used by the restaurant on subject property, into a one-bedroom apartment – completely the three units approved herein. In the event the third apartment is not created within five (5) years from the date this Decision is filed with the Town Clerk, the applicant will be required to apply to the Board of Appeals to receive approval for the third one-bedroom apartment.

4. There shall be no more than seven (7) bedrooms allowed on subject property without further review by the Board of Appeals.

5. There shall be no derogations from any conditions set forth in Special Permits 5-83, 36-95 or 79-02 except as stated herein.

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 three 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: 095-16

Applicant: Mariner Developers, LLC of Falmouth, MA

Subject Property: 444 North Falmouth Highway, North Falmouth, MA
Map 05, Section 07, Parcel 004, 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:
095-16 Mariner Developers, LLC - filed w/Town Clerk 11/4/16