

## Zoning Board of Appeals Decisions Decisions for: 09-01-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 078-16

APPLICANT(S)/OWNER(S): MARK WINER and BRADLEY WINER, TRUSTEES OF THE  
12 SPRING BARS ROAD TRUST

SUBJECT PROPERTY: 12 Spring Bars Road, Falmouth, Massachusetts  
Assessor's Map: Map 39, Section 15, Parcel 037A, Lot 000A

DEED/CERTIFICATE: Book 7164 / Page 303

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 13, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raze the remains of the pre-existing nonconforming building destroyed by fire and reconstruct a substantially same structure on subject property known as 12 Spring Bars 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 September 1, 2016.
4. The public hearing was terminated on September 1, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Member Gerald Potamis sitting as a 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 represented at the hearing by Attorney Kevin P. Klauer, II with Ament Law Firm, 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

8/29/2016 E-mail letter dated 8/27/2016 from Howard Grosser of 14 Spring Bars Road was submitted to the file, stating support of the application to reconstruct the building destroyed by fire and suggested re-designing building footprint that would allow for delivery vehicles to turn around to exit onto Spring Bars Road in a forward gear instead of in reverse which is currently done.

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

7/13/2016 Attorney Kevin P. Klauer, II submitted, on behalf of the applicant, an application, copies of plans (noted below), fee and letter of authorization to the ZBA.

Letters/Referrals/E-mails from Town Departments

7/14/2016 Referral submitted to the file by the Planning Department Staff with no comment.

7/14/2016 Referral submitted to the file by the Conservation Commission Agent that states: No proposal

on how stormwater shall be improved on property? Keep off Spring Bars Road.

7/19/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

7/18/2016 Referral submitted to the file by the Assessor that states: Includes lots 23 and 89.

8/16/2016 Referral submitted to the file by the Town Engineering Department (S. Schluter) that has standard comments including that the project must not direct any stormwater runoff to public property, abutters or right of ways.

Plans submitted by Applicant/Applicant's Representative

"Plot Plan for #12 Spring Bars Road" prepared for Mark Winer in Falmouth, MA as drawn on Sheet X1 of 1 by Falmouth Engineering, Inc. dated June 17, 2016 – stamped signed and dated by Gary S. Labrie, PLS on 7/13/2016 – with A Board date 'received' stamp of July 13, 2016; and

"Concept Designs Mark Winer 12 Spring Bars Road Falmouth, MA" drawn by Architecture by SPB consisting of Drawing A1 showing elevations dated 6/3/2016, Drawing A2 showing proposed Layout dated 6/30/2016 and Drawing A3 showing foundation plan dated 6/3/2016 – all Drawings have a Board date 'received' stamp of July 13, 2016.

Hearing:

Attorney Kevin Klauer reviewed the existing site that has the pre-existing nonconforming structure that was destroyed by fire in December of 2014. Attorney Klauer informed the Board that the applicant is requesting a special permit to raze what is left of the building structure and reconstruct a new structure in the same footprint and with the same height. The nonconforming setback to the easterly side yard property line of 9' and the nonconforming setback to the rear property line of 3.7' will remain nonconforming; both setbacks are required to be at 20' pursuant to Section 240-68 B. of the Code of Falmouth. Attorney Klauer further stated that the previous of the building was a fabric store and the use will remain as a Fabric Store through the reconstruction proposed.

The Board discussed proposed plans with Attorney Klauer. The Board's concerns with drainage were addressed by Michael Borselli, PE with Falmouth Engineering, Inc. All concerns and questions were addressed.

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

Member Van Keuren made a motion to close the hearing. Member Murphy 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 12 Spring Bars Road in Falmouth contains 12,465 square feet of Business 2 zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to reconstruct the pre-existing nonconforming structure on subject property. The required side and rear setbacks of a structure in a Business 2 zoned area are 20' pursuant to Section 240-68 B. of the Code of Falmouth; the existing structure has nonconforming setbacks from the northerly rear property line of 3.7', a 9' from the easterly side property line and 2.7 feet from the southerly side yard property line. All nonconforming setbacks will remain the same through reconstruction. The plan shows that there are twelve (12) existing parking spaces on the property currently, five of which are on the westerly side of the driveway onto the property; the plan does not show width of driveway or parking space sizes. The structure on the property that was destroyed by fire was a fabric store. Testimony from applicant's attorney [Kevin Klauer] was that the intent is to rebuild the structure as it was existing and with the same use as a fabric store.

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 reconstruction of the pre-existing nonconforming structure will not be substantially more detrimental than what currently exists. The Board further finds that testimony by the applicant's attorney and plans submitted is that the structure will be reconstructed in exact same footprint, substantially same height of structure, same parking plan and same use as what existed prior to the fire that destroyed the structure. Furthermore, the Board finds that there will be no change to the nonconforming setbacks existing – they will not become more nonconforming and the lot coverage will remain the same.

The Board finds that testimony was given by applicant's representative [Michael Borselli, PE] in response to referrals regarding stormwater runoff/drainage on subject property. Mr. Borselli stated that his opinion is that no drainage is required based on the elevation and grade of land.

In addition to the above findings, the Board finds that the proposed reconstruction of the 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 reconstruction of the existing structure in the same footprint, with the same height as existing; and that there will be no increase of existing nonconforming setbacks and no new nonconforming setbacks on subject property.
- B. The site is suitable for the existing and continued use of the property as a fabric store as the property is zoned Business 2.
- C. There will be no impact on traffic flow and safety as there is no change in the use of the property and there is 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 the structure will be reconstructed substantially the same as what existing prior to the fire; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will be unchanged.
- F. There are adequate utilities to subject property by virtue of an existing business on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system.
- 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.

The Board of Appeals has weighed the effects of the proposed reconstruction of the structure destroyed by fire 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 Mark Winer and Bradley Winer, Trustees of the 12 Spring Bars Road Trust (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to allow reconstruction, within footprint and of same height, of the existing structure destroyed by fire on subject property known as 12 Spring Bars Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The reconstruction of the existing structure, all setbacks, height of the structure, parking plan, lot coverage and use of the reconstructed structure shall be as represented to the Board and as shown on

plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #12 Spring Bars Road" prepared for Mark Winer in Falmouth, MA as drawn on Sheet X1 of 1 by Falmouth Engineering, Inc. dated June 17, 2016 – stamped signed and dated by Gary S. Labrie, PLS on 7/13/2016 – with a Board date 'received' stamp of July 13, 2016; and

- "Concept Designs Mark Winer 12 Spring Bars Road Falmouth, MA" drawn by Architecture by SPB consisting of Drawing A1 showing elevations dated 6/3/2016, Drawing A2 showing proposed Layout dated 6/30/2016 and Drawing A3 showing foundation plan dated 6/3/2016 – all Drawings have a Board date 'received' stamp of July 13, 2016.

2. 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.

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

4. 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.)

5. 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: 078-16

Applicant: MARK WINER and BRADLEY WINER, TRUSTEES OF THE  
12 SPRING BARS ROAD TRUST of North Andover, MA

Subject Property: 12 Spring Bars Road, Falmouth, Massachusetts  
Map 39, Section 15, Parcel 037A, Lot 000A

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 Winer, Trustees / Filed w/Town Clerk 9/9/16