

## Zoning Board of Appeals Decisions Decisions for: 05-12-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 035-16

APPLICANT/OWNER(S): FALMOUTH YOUTH HOCKEY LEAGUE, INC.  
of East Falmouth, MA

SUBJECT PROPERTY: 9 Technology Park Drive, East Falmouth, MA  
Assessor's Map: Map 15, Section 04, Parcel 015D, Lot 010A

DEED/CERTIFICATE: Book 25659 / Page 105

SUMMARY: Grant as Modification of Special Permit 59-10

PROCEDURAL HISTORY

1. Under a date of March 10, 2016, the applicant applied to the Zoning Board of Appeals for Modification of Special Permit #59-10 to construct an addition to the southwest corner (rear) of existing building and renovate a portion of the interior of building and add one (1) additional locker room on subject property known as 9 Technology Park Drive, East 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 May 12, 2016.
4. The public hearing was terminated on May 12, 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 modification to 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

None

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

3/10/2016 Attorney Moynihan submitted a complete application with authorization from applicant, fee, plans and information.

Letters/Referrals/E-mails from Town Departments

3/11/2016 Cape Cod Commission forwarded a modification of their decision of "Limited Development of Regional Impact Hardship Exemption" previously issued in January of 2011, for the proposed addition requested herein.

3/11/2016 ZBA staff submitted a copy of Special Permit #59-10 that granted the construction and use of the ice arena for the Falmouth Youth Hockey League, Inc.

3/15/2016 The Planning Department staff submitted a referral to the file that states: A Site Plan Review has been filed with the Planning Board and is scheduled to be on the April 12, 2016 Agenda.

3/17/2016 A referral was submitted to the file by Building Commissioner Gore with no comment.

3/22/2016 A referral was submitted to the file by the Falmouth Fire Rescue Department with no comment.

4/12/2016 The Engineering Department submitted a referral to the file that states: See attached Planning Board Review Memo (memo to Planning Board for Site Plan Review attached to referral sheet).

4/29/2016 The Planning Department forwarded a copy of their "Site Plan Review" (SPR) decision for the proposed addition.

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

"Falmouth Ice Arena Technology Park Drive Falmouth Massachusetts" Drawing A1.1 'Floor Plans' (Existing floor plan) drawn by DiLullo Associates, Inc. with final revision date of 7/15/2011 and with a Board date 'received' stamp of March 10, 2016;

"Falmouth Ice Arena Technology Park Drive Falmouth Massachusetts" Drawing A2.1 'Schematic Elevations' (existing plan) drawn by DiLullo Associates, Inc. with final revision date of 7/15/11 and with a Board date 'received' stamp of March 10, 2016;

"Falmouth Ice Arena Addition 9 Technology Park Drive East Falmouth, MA" proposed plans drawn by Hale Design Studio – Drawing A-1.0 'Floor Plans' revision date of 2/18/16 and Board date of Mar 10, 2016, Drawing A-1.0 'Floor Plans' dated 4/7/16 and with Board date 'received' stamp of May 2, 2016, and Drawing A-3.0 'Elevations' revision date of 2/18/16 with a Board date 'received' stamp of Mar 10, 2016; and

"Site Plan Showing Proposed Addition For Lot 10 Technology Park Drive" prepared for Falmouth Youth Hockey in Falmouth MA – Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated January 8, 2016, stamped, signed and dated by Gary S. Labrie, PLS on 2/1/16 and stamped and signed by Michael J. Borselli, P.E. – with a Board date 'received' stamp of March 10, 2016.

#### Hearing:

Attorney Laura Moynihan reviewed the existing Special Permit that granted the construction of the ice arena on subject property and reviewed the proposed addition that will create added space for the gym and training area for skaters who use facility. She explained that the proposed addition at the rear of the existing facility would result in the elimination of twenty-one (21) parking spaces. The subject property currently has 320 spaces, which will be reduced to 299 parking spaces; 217 spaces are required for use.

The Board discussed plans with Attorney Moynihan, including the elimination of 21 parking spaces and the relocation of the leaching pit for drainage. Board's concerns and questions were addressed.

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

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 9 Technology Park in East Falmouth contains 6.9 acres of Light Industrial A zoned land that is located within the West Falmouth Harbor Coastal Pond Overlay District, the Wildlife Corridor and the Natural Heritage & Endangered Species Program (NHESP). The applicant applied for a

modification of previous Special Permit #59-10 [granted the approval to construct the ice rink] to construct an addition to said rink and to renovate a portion of the existing gym area, and add one locker room. The addition will increase the gym and training area. The existing rink is 49,161 square feet in size, the addition will be 2,878 square feet in size with a total building of 52,039 square feet. The addition will result in a net reduction of twenty-one (21) parking spaces, bringing the total parking spaces from 320 to 299; 217 spaces is required for the square footage and use of building.

The Board finds that the proposed addition to the existing building on site does not create any nonconformities. The Board further finds that the parking on site is adequate as the required parking spaces according to zoning is 217 spaces and there will be 299 spaces on site through this addition.

The Board finds that the use conducted on site is appropriate for this zoning district and the use was granted through a Special Permit [#59-10] by the Board of Appeals. The Board further finds that the Cape Cod Commission reviewed the proposed addition and granted a modification on March 2, 2016 (copy of Decision submitted to the file). Furthermore, the Board finds that the Planning Board reviewed the addition under Site Plan Review as a modification and found the parking to be adequate as there is ample parking on site and approved the plan submitted showing said addition discussed herein.

The Board finds that the existing leaching pit at the rear of the building will be relocated on site as shown on the plan submitted. The Board finds that concerns from the Engineering Department were addressed by the applicant.

In addition to the above findings, the Board finds that the proposed addition to the existing ice rink 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 addition as there will be no nonconformities created and all dimensional requirements of Section 240-68 A. and B. and 240-69 A are in compliance with the Town bylaws.
- B. The site is suitable for the proposed use which is allowed by special permit on this Light Industrial A zoned lot.
- C. There will be no impact on traffic flow and safety as there is no change in the use of the building, 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 as the addition is at the rear of the existing building and not seen from the roadway; and there is no impact on any view or vista from said roadway or abutting properties.
- E. The sewage disposal system is in place and a memo from the Board of Health Agent submitted to the file has no objection to the proposed addition as it is within customary activities of the use of the building.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition to the ice rink discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was Site Plan Review as the change required review under conditions of the initial Site Plan Review. The Planning Board had no objections to the addition and conditioned that any further changes to the site will require approval under Site Plan Review.
- 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 addition to the ice rink 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 Foreman 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 Modification to Special Permit 59-10 for Falmouth Youth Hockey League, Inc. (herein referred to as Applicant) under Section(s)

240-57 F. and Article XXXXII (Special Permits) of the Code of Falmouth to construct an addition to the rear of the Southwest corner of the existing building and to renovate a portion of the interior of the building to add one (1) additional locker room on subject property known as 9 Technology Park Drive, East Falmouth, MA. This modification of special permit is subject to the following conditions:

1. The construction and location of the addition, all setbacks, lot coverage, parking, leaching pit relocation, addition of new locker room and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Falmouth Ice Arena Technology Park Drive Falmouth Massachusetts" Drawing A1.1 'Floor Plans' (Existing floor plan) drawn by DiLullo Associates, Inc. with final revision date of 7/15/2011 and with a Board date 'received' stamp of March 10, 2016;

- "Falmouth Ice Arena Technology Park Drive Falmouth Massachusetts" Drawing A2.1 'Schematic Elevations' (existing plan) drawn by DiLullo Associates, Inc. with final revision date of 7/15/11 and with a Board date 'received' stamp of March 10, 2016;

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- "Site Plan Showing Proposed Addition For Lot 10 Technology Park Drive" prepared for Falmouth Youth Hockey in Falmouth MA - Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated January 8, 2016, stamped, signed and dated by Gary S. Labrie, PLS on 2/1/16 and stamped and signed by Michael J. Borselli, P.E. - with a Board date 'received' stamp of March 10, 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. 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.)

4. 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: 035-16

Applicant: FALMOUTH YOUTH HOCKEY, LEAGUE, INC. of East Falmouth, MA

Subject Property: 9 Technology Park Drive, East Falmouth, MA  
Map 15, Section 04, Parcel 015D, Lot 010A

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 Modification to Special Permit 59-10 under 035-16 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

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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 035-16 Fal. Youth Hockey League / filed w/Town Clerk 5/18/16