

Zoning Board of Appeals Decisions Decisions for: 05-26-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 046-16

APPLICANT/OWNER(S): QUISSETT HARBOR BOATYARD INC. of Falmouth, MA

SUBJECT PROPERTY: 36 Quissett Harbor Road, Woods Hole, MA
Assessor's Map: Map 48, Section 02, Parcel 013A, Lot 020

DEED/CERTIFICATE: Certificate 20317 – Lot 20, LC Plan 321Q

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 15, 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 create a dwelling unit within the existing main boatyard building on subject property known as 36 Quissett Harbor Road, Woods Hole, 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 May 26, 2016.
4. The public hearing was terminated on May 26, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Mark Cool 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 represented at the hearing by Attorney Robert H. Ament of 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

The applicant's representative submitted fifteen (15) letters of support to the file from abutters (see file). There were no letters submitted in opposition to the proposed dwelling unit.

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

5/26/2016 Attorney Robert H. Ament submitted a letter to the file addressed to the Board of Appeals dated May 26, 2016 regarding history of subject property with attachments: 1) letter from Ament Law Firm to Eladio R. Gore, Building Commissioner dated November 18, 2015; 2) Durkin vs. Board of Appeals of Falmouth; and 3) Powers vs. Building Inspector of Barnstable.

5/26/2016 Attorney Robert H. Ament submitted a letter to the file from Michael Walker Design/Builder, LLC addressed to Zoning Board of Appeals dated May 18, 2016 regarding referral from the Falmouth Fire Rescue Department.

5/25/2016 Attorney Robert H. Ament submitted a letter to the file addressed to the Zoning Administrator dated May 25, 2016 regarding referral from Falmouth Fire Rescue Department; attached letter from

Architect William Roslanksy dated May 24, 2016 addressed to the Zoning Board of Appeals that notes that the boatyard building is equipped with a 'multi-zone fire alarm' system that is tied to the local fire department.

5/18/2016 Attorney Robert H. Ament submitted a letter to the file addressed to the Zoning Administrator dated May 18, 2016 regarding Conservation Commission's referral.

Letters/Referrals/E-mails from Town Departments

5/3/2016 Referral submitted to the file from the Engineering Department that states: This application was reviewed only for impacts to public right of ways and public utilities. Quissett Harbor Rd is a Public right of way 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.

4/27/2016 Referral submitted to the file from Interim Building Commissioner James Brandolini that states: Shall comply with all applicable Building Code provisions, including Fire Separation.

4/26/2016 Falmouth Fire and Rescue Department submitted a letter date April 26, 2016 to the file regarding the proposed dwelling unit within the boatyard building that states that a sprinkler system may be required under the Building Code.

4/25/2016 Conservation Commission forwarded to the Board of Appeals a copy of the 'Order of Conditions' signed on August 8, 2012.

4/19/2016 Referral submitted to the file from the Historical Committee that states: The applicant must file for a Certificate of Appropriateness if they are considering changes to the exterior of the building.

4/19/2016 Referral submitted to the file from the Planning Department Staff that has no comment.

4/15/2016 Board of Appeals staff submitted to the file a copy of the Special Permit #68-02 for subject property.

4/15/2016 Referral submitted to the file from Conservation Commission Agent Mark Kasprzyk states: Order of Conditions had been issued to rebuild after the fire as long as bedroom number does not change and is part of the approved Order of Conditions 25-3843.

Plans submitted by Applicant/Applicant's Representative

"Site Plan" prepared for: Quissett Harbor Boatyard 36 Quissett Harbor Road Falmouth, Mass. – Sheet 1 of 2 drawn by D.H. Martin Engineering, Inc., with a final revision date of 6/11/12 and a Board date 'received' stamp of April 15, 2016;

"Quissett Harbor Boatyard 36 Quissett Harbor Rd, Falmouth" architectural plans drawn and stamped by William S. Roslanksy consisting of Page 1 showing Second Floor Plan, First Floor Plan, Southeast Elevation, Northwesterly Elevation, Southwest Elevation, Front Elevation and South Elevation with a revision date of 4/11/13; Page 2 is Drawing A-1 'First Floor Plan' with a final revision date of 4/29/2015 (as built); and Page 3 is Drawing A-2 'Second Floor Plan' with a final revision date of 4/29/2015 (as built) – all with a Board date 'received' stamp of April 15, 2016.

Hearing:

Attorney Robert H. Ament reviewed the history of the boatyard noting that a fire destroyed the building in 2012. The building and business commenced prior to 1926 before zoning was adopted in Falmouth and is pre-existing nonconforming due to it being a marina use in a residential district. The applicant was issued a building permit to reconstruct the building in its same location with nonconforming setbacks. The Building Commissioner is requiring a special permit for the residential use that existed within the building for at least thirty (30) years. The residential use would be considered accessory to the primary use of a boatyard. Attorney Ament reviewed the Powers vs. the Building Inspector of Barnstable case and noted that the Board may find that the residential use may not require a special permit. He cited Section 240-

43 C. of the Code of Falmouth under Marine Districts that states: One dwelling unit on each parcel of land, the purpose of which is to house the owner or employee of the use as permitted under §240-42 ['Permitted business, commercial and industrial uses']. Attorney Ament reviewed the floor plan of the unit showing that the kitchen and living area on the first floor would be used by employees as well as a lounge area and the two bedrooms will be located on the second level. He further suggested that having someone reside there would be good for security purposes.

The Board discussed plans and case law submitted with Attorney Ament. It was noted that a special permit was issued for subject property in 2002 for a shed dormer (as the building has nonconforming setbacks). All concerns and questions were addressed. Attorney Ament noted that the founder of the boatyard, Mr. Barnard, may reside in the unit part of the year and then craftsmen or employees may also reside there. Weatherly Dorris, owner, was present and stated that the dwelling unit has separate heating zone and can be used year round.

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

The Board discussed the proposed dwelling unit within the boatyard building and agreed that the dwelling unit does require a special permit.

Member Cool made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 4 – 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 36 Quissett Harbor Road contains 21,950 square feet of Residential A zoned land that is located within the Historic District Overlay. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to allow a dwelling unit to be created within the existing boatyard building on subject property. The boatyard building, built prior to 1926, was destroyed by fire in 2012 and was allowed to be reconstructed in the same location. The marine use of subject property predated zoning. However, the apartment that was created approximately in the 1980's did not predate zoning and therefore the Building Commissioner determined that a special permit was required to allow the continued use of an apartment within the building with marine use.

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 building or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed dwelling unit/apartment to be created within the pre-existing nonconforming boatyard building will not be substantially more detrimental than what currently exists. The Board further finds that the use of the boatyard in the residential district predates zoning and is thereby lawfully nonconforming.

The Board finds that the existing marine use boatyard exists in a residential zoned district. The Board further finds that the Code of Falmouth allows an apartment use within a Marine district on a lot as an accessory use to a marine use for employees or owner only. Furthermore, the Board finds that the subject property is a marine use and the proposed dwelling unit/apartment will be an accessory use for employees and/or owners of boatyard use only.

The Board finds that although the dwelling unit/apartment was created in the 1980's, its use is not protected under the zoning bylaw and therefore requires a special permit. The Board further finds through testimony of the applicant's representative that the dwelling unit/apartment will be used only by the owners' of the boatyard use or the employees of the boatyard use and shall not be rented to outside parties. Furthermore, the Board finds that the kitchen and living room area of the dwelling unit/apartment is used by employees as a lounge for eating and resting purposes during working hours.

The Board finds through submission of letters to the file from abutters, that abutters support the

proposed dwelling unit/apartment. The Board further finds that traffic to the subject property will not be impacted by the use of this dwelling unit/apartment as it is intended only for individuals who are employed or own subject property.

The Board finds through testimony by the applicant's representative that a septic system on subject property has the capacity to support the proposed dwelling unit/apartment with the two bedrooms (on second level). The Board further finds through testimony by the applicant's representative that the building is protected by a multi-zone fire alarm that is tied to the local fire department. Furthermore, the Board finds through testimony by the applicant that the building has several heating zones so that the proposed dwelling unit/apartment is suitable for year-round use.

In addition to the above findings, the Board finds that the proposed dwelling unit/apartment within the boatyard building 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 as the dwelling unit will be created within the existing building on subject property – no additions to exterior and no change to existing setbacks or lot coverage.
- B. The site is suitable for the proposed boatyard building with a dwelling unit as the boatyard building was constructed prior to 1926 and has been used as such since inception.
- C. There will be no impact on traffic flow and safety as the proposed unit will be used by the owner of the boatyard or employees of the boatyard – the unit will not be rented out.
- D. The visual character of the subject property will be unchanged; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will require review by the Board of Health before building permit approved for the dwelling unit proposed herein.
- F. There are adequate utilities to subject property by virtue of an existing building on site.
- G. The proposed request for dwelling unit within existing boatyard building 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 dwelling unit within the boatyard building 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 Cool made a motion to Grant the Special Permit with conditions. Member Hurrie 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 4 – 0 to Grant the Special Permit to Quissett Harbor Boatyard Inc. (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to allow for a dwelling unit/apartment within the existing main boatyard building on subject property known as 37 Quissett Harbor Road, Woods Hole, MA. This special permit is subject to the following conditions:

1. The dwelling unit/apartment location within the boatyard building and its use 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: Quissett Harbor Boatyard 36 Quissett Harbor Road Falmouth, Mass. – Sheet 1 of 2 drawn by D.H. Martin Engineering, Inc., with a final revision date of 6/11/12 and a Board date 'received' stamp of April 15, 2016;
- "Quissett Harbor Boatyard 36 Quissett Harbor Rd, Falmouth" architectural plans drawn and stamped by William S. Roslansky consisting of Page 1 showing Second Floor Plan, First Floor Plan, Southeast Elevation, Northwesterly Elevation, Southwest Elevation, Front Elevation and South Elevation with a

revision date of 4/11/13; Page 2 is Drawing A-1 'First Floor Plan' with a final revision date of 4/29/2015 (as built); and Page 3 is Drawing A-2 'Second Floor Plan' with a final revision date of 4/29/2015 (as built) - all with a Board date 'received' stamp of April 15, 2016.

2. The dwelling unit/apartment within the boatyard building approved herein shall be used only by employees of the boatyard or family of the owners of the boatyard use. The dwelling unit/apartment shall not be rented out to any parties not employed at the boatyard operation or to any parties that are not family related to the owner(s) of the boatyard on subject property represented herein.

3. There shall be no more than two bedrooms created within the dwelling unit/apartment approved herein. There shall not be more than two bedrooms total on subject property.

4. There shall be no expansion to the dwelling unit/apartment space shown on plan approved herein.

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: 046-16

Applicant: QUISSETT HARBOR BOATYARD INC. of Falmouth, MA

Subject Property: 36 Quissett Harbor Road, Woods Hole, Massachusetts
Map 48, Section 02, Parcel 013A, Lot 020

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 - 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 046-16 Quissett Harbor Boatyard / Filed w/ Town Clerk 6/7/16