

## Zoning Board of Appeals Decisions Decisions for: 11-03-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 063-16

APPLICANT: NICKERSON STREET LLC of East Falmouth, MA

OWNER: Lynne J. Corson of East Falmouth, MA

SUBJECT PROPERTY: 0 East Falmouth Highway, East Falmouth, Massachusetts  
Assessor's Map: Map 32, Section 04, Parcel 001, Lot 001

DEED/CERTIFICATE: Book 13911 / Page 295

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 1, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-51 A. (5) of the Code of Falmouth to allow a multi-family development consisting of two duplex dwellings and a detached garage on subject property known as 0 East Falmouth Highway, 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 July 14, 2016.
4. The public hearing was terminated on November 3, 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, as well as copies of requests from applicant's representative to continue the hearings to certain dates.
5. The applicant was represented at the hearing by Stephen O. McKenzie, Zoning Consultant, 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)

6/01/2016 Stephen O. McKenzie submitted on behalf of the applicant, Nickerson Street LLC, an application, letter of authorization from current owner of subject property, copy of P & S Agreement, 4 sets of Site Plan of Land, Landscape Plans and Elevation Plans

10/12/2016 Stephen O. McKenzie submitted revised Architectural Plans and Site Plans (Drawing 1 of 7)

Letters/Referrals/E-mails from Town Departments

6/01/2016 Planning Department staff submitted a referral to the file with no comment

6/07/2016 Falmouth Fire Rescue Department submitted a referral to the file with no comment

6/07/2016 Conservation Commission submitted a referral to the file that states: Critical that all drainage contained on property away from East Fal. Highway as drainage runs toward wetlands.

6/21/2016 Marine & Environmental submitted a referral to the file with no comment

7/05/2016 Engineering Department submitted a referral to the file with standard comments and a recommendation for drywells for the proposed building roofs be added

7/06/2016 Building Commissioner Brandolini submitted a referral to the file with no comment

11/03/2016 Planning Department submitted to the file the Site Plan Review Decision for subject development – Decision dated November 3, 2016 stated conditions

Plans submitted by Applicant/Applicant's Representative

"Site Plan of Land" prepared for Nickerson Street LLC – 2 Proposed Multi-family Buildings, Sheet 1 of 2 as drawn by J. Doyle Associates dated March 30, 2016 – stamped and signed by John P. Doyle, III, RLS with a final revision date of 10/10/2016 and with a Board date 'received' stamp of November 3, 2016;

"Site Plan of Land" prepared for Nickerson Street LLC – Proposed Multi-family Dwellings Map 32-04-001-001 0 East Falmouth Highway, MA 'Sections and Details' – Sheet 2 of 2 with a revised date of 10/10/2016 – stamped and signed by John P. Doyle, III, RLS with a Board date 'received' stamp of October 12, 2016;

"Landscape Plan" prepared for Nickerson Street LLC – 2 Proposed Multi-family Buildings and Proposed Garage Map 32-04-001-001 East Falmouth Highway, dated March 30, 2016 – stamped by John P. Doyle, III, RLS and with a Board date 'received' stamp of June 01, 2016;

"Maclone Duplex 0 Central Ave. Falmouth, MA" plans drawn by David McLean Architectural Design Services consisting of Drawing No. 1 of 7 and 2 of 7 – both dated 5/23/2016 with a Board date 'received' stamp of June 01, 2016; and

"Maclone Duplex 0 Central Ave Falmouth, MA" plans drawn by David McLean Architectural Design Services consisting of Drawing No 3 of 7 dated 5/23/2016 and with a Board date 'received' stamp of October 12, 2016

Hearing:

Stephen O. McKenzie reviewed the existing vacant lot and the proposed construction of two duplex condominium buildings creating four units on a parcel that is zoned Business 3 and Agricultural B. Multi-family units are allowed by special permit on Business 3 zoned land; the proposed units will be created on the portion of the subject property that is zoned Business 3. The original proposal showed a garage structure in the southeast portion of the lot – the garage has been removed from the plan. The units will all have two bedrooms with no more than eight bedrooms on site. There is sufficient parking for the development – 9 spaces – as shown on the plans submitted. He reviewed the drainage proposed and the landscape plan submitted. He stated that the landscape plan will be revised to show removal of proposed garage structure and re-submitted. Mr. McKenzie explained the 20' wide easement within the existing driveway that allows access to lots beyond subject property.

The Board discussed plans with Mr. McKenzie and asked about a dumpster and landscaping. Dan Maclone with Nickerson Street LLC explained that trash pickup would be determined by the association that will be in place upon completion of the development; Mr. McKenzie reviewed landscaping. Board discussed and will condition a dumpster be located at the northwest corner of parking area. Applicant was amenable to locating a dumpster as discussed by the Board.

Mr. McKenzie noted that the project has received Site Plan Review approval from the Planning Board with the condition that an address sign be posted at the entrance of the driveway on Central Avenue.

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

Mary Guerra of 3 Squibnocket Drive stated concern if the project is for rental units.

Steven Guerra of 3 Squibnocket Drive questioned if proposed units will be for sale or rented.

Shawn Precourt of 8 Central Avenue had a question regarding a fence.

Member Murphy 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 the northeast corner of Central Avenue and East Falmouth Highway, Map 32, Section 04, Parcel 001, Lot 001, contains 33,474 square feet of Business 3 and Agricultural B zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-51 A. (5) of the Code of Falmouth to allow a multi-family development consisting of two duplex condominium buildings for a total of four dwelling units on subject property. The dwelling units will be 'for sale' units. There will be no garage on subject property as shown on original plan submitted that was revised on October 10, 2016. There will be nine (9) parking spaces on subject property to accommodate the four units. Each unit will have no more than two bedrooms. The building height is shown as 28' on Drawing No. 1 of 7 submitted with application. All maintenance of driveway, parking, landscaping, snow plowing and trash will be the responsibility of the association for subject development and will not be the responsibility of the Town. The Board discussed locating a dumpster for the tenants next to the most northwest parking space on site; the applicant will submit a revised landscape plan relocating the proposed tree near that area and showing the dumpster.

Section 240-51 A. (5) of the Code of Falmouth allows the Board of Appeals to approve a special permit for multi-family use if the Board finds that the public good will be served; that the business zoned area would not be adversely impacted; that any use in the zone will not be noxious to a multi-family use; and that the density of the development will not exceed six (6) units per acre.

The Board finds that all four (4) dwelling units proposed herein will be located within the Business 3 zoned portion of the subject property (see plans submitted). The Board further finds through testimony of the applicant's representative that all four (4) units will be 'for sale' units. Furthermore, the Board finds through testimony by the applicant's representative that each unit will have a front light.

The Board finds through testimony of the applicant's representative and the "Site Plan of Land" submitted to the file, there is an existing easement of the driveway use for access to three (3) properties located east of subject property.

The Board finds that the subject property is 33,474 square feet in size; the bylaw requirement is no more than six units per acre – based on the size of subject property ( $43,560 \text{ sf acre} \div 6 \text{ units} = 7,260 \text{ sf x's } 4 \text{ units} = 29,040 \text{ sf of land required}$ ), the proposed project meets the requirement of Section 240-51 A. (5) for number of units. Even though the property is split zoned, with the Business 3 area being less than half of the gross property area, it is noted that the multi-family use will be contained and located within the Business 3 zoned portion of said land. The Board further finds that the business zoned area will not be adversely impacted by the proposed four dwelling development on subject property as the site has residential properties to the east, north and south. Furthermore, the Board finds that the existing commercial uses to the west of subject property will not be affected by the proposed multi-family development.

The Board finds that the applicant was amenable to widen the driveway to 18' to improve access for subject property as recommended by the Engineering Department and Planning Board. The Board further finds that the drainage as shown on the "Site Plan of Land" submitted is appropriate for the development. Furthermore, the Board finds through testimony by the applicant's representative that the landscape plan

will be revised to show additional buffering of the easterly property line and the dumpster location with the relocation of one tree that will be moved to accommodate said dumpster at the most northeasterly parking space.

The Board finds that the existing vegetation along East Falmouth Highway and Central Avenue on subject property will remain as a natural buffer of the proposed development. The Board further finds that the proposed drainage for subject property is appropriate for the development.

The Board finds through testimony by the applicant and the applicant's representative that an association will be created and a Master Deed for said development will include that the owner of any unit on subject property shall not rent out their unit for a time period of less than six (6) months in one year, that said association will be responsible for maintaining drainage on site, maintaining septic system on site and that all trash, landscaping and snow plowing of driveways and parking on subject property. The Board further finds that the applicant's representative will submit a draft of the Master Deed to the Board of Appeals for approval prior to the issuance of a building permit for the proposed development.

In addition to the above findings, the Board finds that the proposed four unit development with 'for sale' units 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 four unit development as it meets the criteria of Sections 240-68 A. and B. for setbacks and Section 240-69 A. for lot coverage.

B. The site is suitable for the proposed use as the development will be located within the Business 3 zoned portion of the subject property that allows multi-family use.

C. There will be no additional impact on traffic flow and safety through the creation of this development as the adjacent two roads (East Falmouth Highway and Central Avenue) based on trip generations noted for this development. The existing driveway will be improved for better access to the subject property and the two properties that use the easement of said driveway.

D. The visual character of the subject property will be improved through the creation of a four unit 'for sale' development 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 will be installed to accommodate the four units that will contain no more than eight (8) bedrooms total for the site that will be approved by the Board of Health prior to issuance of a building permit.

F. The applicant will be responsible to file with appropriate departments to install adequate utilities for the proposed development on subject property.

G. The proposed four (4) unit development discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was Site Plan Review conducted by the Planning Board and the decision of the Site Plan Review was submitted to the file and taken into consideration by the Board of Appeals in its Decision.

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 development 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 Hurrie seconded the motion. Motion carried 5 – 0.

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 Nickerson Street LLC (herein referred to as Applicant) under Section(s) 240-51 A. (5) of the Code of Falmouth to allow a multi-family development consisting of two duplex condominium buildings on subject property known as 0 East Falmouth Highway (Map ID 32, 04, 001, 001), East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location and construction of the two duplex condominium buildings, septic system, driveway

improvement, landscape, setbacks, lot coverage and use of the buildings shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan of Land" prepared for Nickerson Street LLC – 2 Proposed Multi-family Buildings, Sheet 1 of 2 as drawn by J. Doyle Associates dated March 30, 2016 – stamped and signed by John P. Doyle, III, RLS with a final revision date of 10/10/2016 and with a Board date 'received' stamp of November 3, 2016;
- "Site Plan of Land" prepared for Nickerson Street LLC – Proposed Multi-family Dwellings Map 32-04-001-001 0 East Falmouth Highway, MA 'Sections and Details' – Sheet 2 of 2 with a revised date of 10/10/2016 – stamped and signed by John P. Doyle, III, RLS with a Board date 'received' stamp of October 12, 2016;
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- "Maclone Duplex 0 Central Ave Falmouth, MA" plans drawn by David McLean Architectural Design Services consisting of Drawing No 3 of 7 dated 5/23/2016 and with a Board date 'received' stamp of October 12, 2016

2. The applicant shall revise the landscape plan to show the dumpster location next to the most northwesterly parking space, relocation of the proposed tree at the site and buffering of the easterly property line. The revised landscape plan shall be submitted to the Board of Appeals for approval prior to the issuance of a building permit.

3. There shall be no more than four (4) dwelling units on subject property and there shall be no more than eight (8) bedrooms (two bedrooms per unit) allowed on subject property.

4. Each unit shall have a front door lantern/light at entrance.

5. The applicant shall submit to the Board of Appeals, prior to the issuance of a Building Permit, a draft of the proposed Master Deed for the development approved herein. The Master Deed shall set forth the responsibility of the association to maintain the septic system, drainage, landscaping; that the association will be responsible for trash pickup from dumpster, snow plowing of driveway and parking; and that no owner of a unit shall rent their unit for a period of less than six (6) months and that there shall be no subletting of any unit. The Board of Appeals will review and approve the Master Deed, which will then be signed and filed with the Registry of Deeds. A filed copy of the Master Deed shall be submitted to the Board of Appeals prior to final construction sign off by the Building Department or the Board of Appeals.

6. The Board of Appeals' Zoning Administrator will conduct a site visit prior to final sign off by the Building Department to insure that all landscaping, parking and driveway is as approved herein. The site visit will not be conducted by the Zoning Administrator until a copy of the Master Deed, filed with the Barnstable County Registry of Deeds, has been submitted to the Board of Appeals.

7. 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.

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

9. 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.)

10. 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: 063-16

Applicant: NICKERSON STREET LLC of East Falmouth, MA

Subject Property: 0 East Falmouth Highway, East Falmouth, Massachusetts  
Map 32, Section 04, Parcel 001, Lot 001

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 063-16 Nickerston Street LLC, filed w/Town Clerk 11/14/16