

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 025-17

APPLICANT/OWNER: BOGOSIAN DEVELOPMENT LLC of Falmouth, MA

SUBJECT PROPERTY: 587 Main Street and 17 and 19 Nye Road, Falmouth, MA
Assessor's Map: Map 47B, Section 04, Parcel 015, Lot 000 (587 Main St)
Map 47B, Section 04, Parcel 016, Lot 001 (17 Nye Rd)
Map 47B, Section 04, Parcel 016, Lot 002 (19 Nye Rd)

DEED/CERTIFICATE: Book 30214 / Page 46 (3 Lots)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 5, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-240 G. (1)(b) of the Code of Falmouth to construct a 2 ½ story building with commercial space on ground level and three residential units on upper level(s) and maintain existing two (2) single-family dwellings on adjacent properties that will be merged with subject property to create a 29,605 square foot lot – subject properties are 587 Main Street (subject property) and 17 and 19 Nye 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 May 25, 2017.
4. The public hearing was terminated on June 22, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Gerald Potamis, 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 Kevin P. Klauer, II with Ament Klauer LLP, 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

04/27/2017 Letter submitted to the file by Thomas Mason of 17 Nye Road stating support of the proposed project (Mr. Mason is a tenant of one of the properties included in this SP request)

- 05/24/2017 E-mail letter submitted to the file written by Leslie McDonald, 96 Queen Street – letter includes comments on plans, existing and proposed and existing and proposed landscaping
- 05/24/2017 E-mail letter submitted to the file from Leslie McDonald, 96 Queen Street – asking the Board to discuss with the applicant any proposed HVAC and venting of kitchen for proposed restaurant within the development
- 05/25/2017 E-mail letter submitted by Attorney Klauer from Gerard Smith of 27 Nye Road with comments and support of proposed development

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

- 06/09/2017 Attorney Klauer submitted a letter to the file dated June 9, 2017 with attached revised architectural plans and “Commercial Site Plan” as well as two Appeals court cases: Edward T. Moore & another, trustees vs. Town of Swampscott & another and Arnold B. Tofias & another, trustees vs. William C. Butler & others

Letters/Referrals/E-mails from Town Departments

- 04/10/2017 Referral submitted to the file from Planning Department that notes: *Before Planning Board on 4/25/17 for Site Plan Review*
- 04/11/2017 Referral submitted to the file from the Director of Assessing with no comment
- 05/01/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with letter attached noting that the structure with commercial use and dwelling units will be required to have an automatic fire sprinkler system and an automatic fire detection system to be monitored by either municipal fire alarm system or a central station monitoring company; and a Knox box key entry system shall be installed.
- 05/03/2017 Planning Department submitted to the file a copy of the “Site Plan Review” Decision dated May 3, 2017, addressed to Rod Palmer, Building Commissioner – the decision states findings and conditions
- 05/10/2017 Referral submitted to the file from the Town Engineering Department with attached comments sent to Planning Board for Site Plan Review
- 05/31/2017 E-mail from Zoning Administrator to Amy Lowell, Superintendent of Wastewater regarding 17 and 19 Nye Road’s requirements, if any, to hook to Town sewer on Main Street after merging with 587 Main Street; and Ms. Lowell’s response (no requirement)

Plans submitted by Applicant/Applicant’s Representative

“Commercial Site Plan 587 Main Street in Falmouth, Massachusetts” as drawn on plans by Cape & Islands Engineering consisting of Sheet 1 of 9 ‘Cover Sheet’, Sheet 2 of 9

‘Existing Conditions Plan’, Sheet 3 of 9 ‘Layout and Materials Plan’, Sheet 4 of 9 ‘Layout and Materials Plan’, Sheet 5 of 9 ‘Layout and Materials Plan’, Sheet 6 of 9 ‘Grading and Drainage Plan’ and Sheet 7 of 9 ‘Utility Plan’ – all dated March 3, 2017 with a final revision date of 6/5/17 – all stamped, signed and dated by Mark D. Dibb, P.E. and Matthew C. Costa, P.L.S. on 6/5/17 and with a Board date ‘received’ stamp of June 9, 2017;

“Commercial Site Plan 587 Main Street in Falmouth, Massachusetts’ as drawn on plans by Cape & Islands Engineering consisting of Sheet 8 of 9 ‘Site Details and Sheet 9 of 9 ‘Site Details’ – both dated March 3, 2017 with final revision date of 6/5/17 – both stamped, signed and dated by Mark D. Dibb, P.E. on 6/5/2017 and with a Board date ‘received’ stamp of June 9, 2017; and

“587 Main St, Falmouth” plans drawn by Longfellow Design-Build consisting of Drawing A1 ‘Proposed First Floor Plan’ dated 4/19/17 with a Board date ‘received’ stamp of June 9, 2017, Sheet 2 ‘Proposed Second Floor Plan’ dated 3/11/2017 with a Board date ‘received’ stamp of April 5, 2017, Sheet 3 ‘Proposed Third Floor Plan’ dated 3/11/2017 with a Board date ‘received’ stamp of April 5, 2017, Sheet 4 ‘Proposed Exterior Elevations’ dated 3/11/2017 with a Board date ‘received’ stamp of April 5, 2017 and Sheet 5 ‘Proposed Exterior Elevations’ dated 3/11/2017 with a Board date ‘received’ stamp of April 5, 2017.

Hearing 5/25/2017:

Attorney Klauer reviewed the three lots that comprise the proposed project that will be merged prior to issuance of a building permit. Lots known as 17 and 19 Nye Road each have a single-family dwelling and zoned Business 2; and a vacant lot known as 587 Main Street that is zoned Business Redevelopment. The proposed plans show 17 and 19 Nye Road remain as single-family dwellings and proposed for 587 Main Street is a 2.5 story structure with three (3) retail/commercial uses on first floor and three apartment units on second and third floors. For this use twenty-eight (28) spaces are required, twenty-four (24) spaces are proposed on what will be one lot (after merging) and the applicant is requesting a reduction in parking under 240-107 B. of the Code of Falmouth (10% is by-right – decrease in four (4) spaces is approximately 15%). There are fourteen (14) parking spaces proposed behind commercial/residential structure and ten (10) parking spaces proposed to the south side of 17 Nye Road. Attorney Klauer noted that the rents for the three apartment units will be affordable, although there is no ‘affordable’ component associated with the proposed Special Permit.

The Board discussed plans with Attorney Klauer. Concerns of parking for tenants residing in proposed apartments was discussed and Board asked applicant to make four (4) of the parking spaces on the south side of proposed commercial/residential structure to be designated as tenant parking – applicant was amenable to the designated parking. Testimony by applicant insured the Board that all stormwater runoff will be maintained on subject property. The Board reviewed height of structure, lighting plan and landscaping/screening for proposed project and for privacy of the two existing dwellings within the development. All concerns and questions were addressed.

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

Salvatore Carbonetto of 56 Nye Road (641 Main St) stated concern with traffic flow in the area and would like more information on the issue.

Joyce Cannon of 536 Main Street stated objection to the reduced parking citing people with mobility issues and the need for ADA parking.

Continued Hearing: 6/22/2017:

Attorney Klauer reviewed the information the Board requested at last hearing: four (4) parking spaces designated for tenants at commercial/residential structure and revised architectural plans showing seating within proposed restaurant. Attorney Klauer stated that the two (2) dwellings known as 17 and 19 Nye Road, included within this development, will not be required to be attached to Town sewer at this time.

Board discussed revisions briefly.

There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Foreman 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 587 Main Street and 17 and 19 Nye Road, after being merged will contain 29,605 square feet of Business Redevelopment (BR) and Business 2 (B2) zoned land (front part of property off Main Street is BR – the two (2) existing dwellings are located in B2 zoning). The applicant applied under Section(s) 240-240 G. (1)(b) of the Code of Falmouth to construct a 2 ½ story building with commercial space on ground level and three (3) residential units on the upper levels and to maintain the two (2) existing single-family dwellings on the [now rear] property. During the hearing process the Board included in the application a request for relief under Section 240-107 B. of the Code of Falmouth to allow a reduction of 15% in the parking for the proposed project. Each of the three (3) apartments will have two (2) bedrooms. The plans for the ground level commercial space show two (2) retail spaces and one (1) restaurant that can accommodate twenty-two (22) seats. The height of the proposed structure will be 34'9".

Section 240-240 G. (1)(b) of the Code of Falmouth requires an applicant to apply for a special permit for multifamily use greater than six units per acre up to eight (8) units/acre if the Board finds that the public good will be served, that the business zoned area would not be adversely affected and that the uses permitted will not be noxious to a multifamily use.

The Board finds that Section 240-240 of the Code of Falmouth sets forth criteria specific to a Business Redevelopment zoned district which a portion of this development is within and that the proposed plans

to construct a 2 ½ story building with commercial use on the ground floor and apartment units on the second and third floor is appropriate for this site. The Board further finds that there will be five (5) total dwelling units on proposed lot that include the three apartment units in the front portion of the proposed lot zoned BR and the two existing single-family dwelling on two adjacent lots (to be merged with the main lot to create a total of 29,605 square foot lot). Furthermore, the Board finds that the applicant has submitted lighting and landscape plans that are appropriate for the proposed development and include screening of the existing dwellings at the rear of the proposed lot (fencing and plantings), and low level lighting for the parking areas that will not be offensive to the existing and abutting dwellings with low impact to roadway traffic (See Sheet #5 of 9 “Bogosian Development LLC with revision date of 6/5/17 noted herein).

The Board finds that there is appropriate drainage that will be installed to maintain stormwater runoff on subject property through the construction of the commercial/residential use structure as proposed (See Sheet #6 of 9 “Bogosian Development LLC with revision date of 6/5/17 noted herein). The Board further finds that the commercial/residential proposed structure will be hooked to the Town sewer system; and that the two dwellings on the rear of the proposed lot will utilize existing septic system designated for each dwelling at this time. In the event of failure to one or both of the existing septic systems servicing the two dwellings, the applicant may be required to hook up to the Town sewer system. The applicant should be in contact with the Town Wastewater Department to understand any betterments and costs that may be associated with attaching to the Town sewer in the event said action is required in the future.

Section 240-107 B. of the Code of Falmouth requires an applicant to apply to the Board of Appeals for a special permit if a ‘reduction’ of parking is greater than what is allowed in Section 240-107 A. (1) of the Code of Falmouth.

The Board finds that the request for reduction in parking from 28 required spaces based on the size and use of the proposed commercial/residential structure, to 24 parking spaces is greater than the 10% by right allowed in Section 240-107 A. (1) of the Code of Falmouth and therefore the applicant needs relief under Section 240-107 B. of said Code. The Board finds that the request to reduce the 28 required spaces to 24 spaces is appropriate to service the uses on site that lends to the concept of shared parking based on the different peak demand times for uses on site and is therefore approving relief under Section 240-107 B. of the Code of Falmouth. Furthermore, the Board finds that the proposed reduction in parking is minimal and appropriate; also noted was if a restaurant (twenty-two seat restaurant as approved herein) does not become a tenant then the other uses allowed in this zoning district will require less parking and may not require the reduction discussed.

The Board finds that the applicant is proposed fourteen spaces at the rear of the proposed commercial/residential structure – four (4) of which applicant has agreed to designate as parking for the tenants of 587 Main Street apartment units, and ten (10) additional parking spaces to the south of 17 Nye Road (single-family dwelling on subject property) for use from activities related to 587 Main Street.

The Board finds through testimony by the applicant’s representative that the proposed height of the structure will be 34’ (not shown on elevations submitted to the file). The Board further finds through testimony by the applicant’s representative that the two existing single-family dwellings at rear of proposed property will be maintained as existing and screened appropriately so as not to be adversely affected by the proposed uses on front of property (587) Main Street.

In addition to the above findings, the Board finds that the proposed 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 commercial/residential structure and parking proposed on the property known as 587 Main Street that will be merged with 17 and 19 Nye Road as all setbacks, height of structure and uses are in compliance with Town Code as herein applied for.

B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.

C. There will be minimal impact on traffic flow and safety in the general vicinity of Nye Road and Main Street through this proposed project. Nye Road is a residential area and the project adds three additional dwelling units; the proposed commercial operations may slightly add to the additional traffic existing along Main Street. The proposed driveway off Nye Road will be created with appropriate site line to the intersection of Main Street and Nye Road.

D. The visual character of the subject property will be an improvement to the visual character of the general area; and there will be no impact on any view or vista from the roadway or abutting properties.

E. The commercial/residential structure will be hooked up to the Town sewer and the two single-family dwellings on the rear of the proposed property will maintain the existing septic systems.

F. Adequate utilities will be installed on the front portion of the proposed lot to support the proposed commercial/residential structure. The applicant will be responsible to file appropriate permits with Town departments for said utilities.

G. The proposed commercial/residential structure on subject property will have no effect Housing Inventory for affordable units, however, testimony by the applicant's representative was that the rent for the three (3) proposed units will be within affordable scale to accommodate work force housing.

H. There was a Site Plan Review decision by the Planning Board submitted to the file that the Board took into consideration through the special permit process.

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 that will add to the affordable Housing Inventory for the Town of Falmouth.

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 Potamis 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 Bogosian Development LLC (herein referred to as Applicant) under Section(s) 240-240 G. (1)(b) and 240-107 B. of the Code of Falmouth to construct a 2 ½ story building

with commercial space on ground level and three residential units on upper level(s) and maintain existing two (2) single-family dwellings on adjacent properties that will be merged with subject property to create a 29,605 square foot lot – subject properties are 587 Main Street (subject property) and 17 and 19 Nye Road, Falmouth, MA. This special permit is subject to the following conditions:

1. The construction of the commercial/residential structure, all setbacks, height of structure, lot coverage, landscaping, parking and use of proposed structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Commercial Site Plan 587 Main Street in Falmouth, Massachusetts” as drawn on plans by Cape & Islands Engineering consisting of Sheet 1 of 9 ‘Cover Sheet’, Sheet 2 of 9 ‘Existing Conditions Plan’, Sheet 3 of 9 ‘Layout and Materials Plan’, Sheet 4 of 9 ‘Layout and Materials Plan’, Sheet 5 of 9 ‘Layout and Materials Plan’, Sheet 6 of 9 ‘Grading and Drainage Plan’ and Sheet 7 of 9 ‘Utility Plan’ – all dated March 3, 2017 with a final revision date of 6/5/17 – all stamped, signed and dated by Mark D. Dibb, P.E. and Matthew C. Costa, P.L.S. on 6/5/17 and with a Board date ‘received’ stamp of June 9, 2017;
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2. The applicant shall file a plan to merge the subject properties (587 Main Street and 17 and 19 Nye Road) with the Planning Board and upon approval by the Planning Board, shall then file said approved plan with the Registry of Deeds and submit a copy of the filed plan to the Board of Appeals prior to issuance of a Building Permit.
3. The commercial uses on the ground level of the proposed structure discussed and approved herein shall be in compliance with the allowed uses set forth in Section 240-240 B., D. and E. of the Code of Falmouth. Any accessory use on subject property will require approval by the Board of Appeals.
4. The three (3) apartment units proposed and approved herein shall each have no more than two (2) bedrooms per unit.

5. The applicant shall designate four (4) parking spaces immediately behind the commercial/residential structure approved herein and shall be designated by signage for residential tenants only.
6. The applicant is approved for one (1) restaurant to operate on the ground level of the commercial/residential structure with seating capacity of no more than twenty-two (22) seats. In the event additional seating is desired, the applicant will be required to apply to the Board of Appeals for approval of any additional seating on site.
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 all Town departments in regards to installing utilities on site for the proposed commercial/residential structure approved herein as well as a permit from the Engineering Department for a driveway.
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 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: **025-17**

Applicant: **BOGOSIAN DEVELOPMENT LLC of Falmouth, MA**

Subject Property: 587 Main Street and 17 and 19 Nye Road, Falmouth, MA
Assessor's Map: Map 47B, Section 04, Parcel 015, Lot 000 (587 Main St)
Map 47B, Section 04, Parcel 016, Lot 001 (17 Nye Rd)
Map 47B, Section 04, Parcel 016, Lot 002 (19 Nye Rd)

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.



Kenneth H. Foreman, Vice Chairman, Board of Appeals

RECEIVED

JUL - 3 2017

FALMOUTH TOWN CLERK



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.