

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 037-17 Modifying Special Permit #45-89

APPLICANT/OWNER: FWG, LLC of Norwood, MA

SUBJECT PROPERTY: 125 Falmouth Woods Road, East Falmouth, Massachusetts
Assessor's Map: Map 11, Section 01, Parcel 029, Lot 001B

DEED/CERTIFICATE: Book 28691 / Page 250

SUMMARY: Modification of Special Permit #45-89 Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 17, 2017, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #45-89 pursuant to Section(s) Article XXVII, Section(s) 240-38 A. and 240-107 of the Code of Falmouth to construct ten (10) structures each with eight (8) units of commercial accommodations and request a parking reduction on subject property known as 125 Falmouth Woods Road, 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 20, 2017.
4. The public hearing was terminated on July 20, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate Member Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Kelly Durfee-Cardoza with Avalon Consulting Group, LLC of Taunton, MA, 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

- 07/20/2017 At the hearing the applicant's representative submitted sixteen (16) letters from development (Ballymeade) residents in support of the proposed project
- 07/20/2017 Ronald Dyer submitted a letter in favor of the proposed project (Mr. Dyer was present and spoke in favor as well)

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

- 05/17/2017 Applicant's representative (Avalon Consulting Group, LLC) submitted an application, fee, authorization, plans and several attachments regarding proposed project
- 07/13/2017 Letter dated June 20, 2017 submitted to the file from Holmes and McGrath, Inc., project engineers, regarding referral from Town Engineering Department
- 07/20/2017 Applicant's representative submitted to the file a copy of the power point presentation given at the hearing on this date regarding proposed project

Letters/Referrals/E-mails from Town Departments

- 05/18/2017 Referral from the Planning Department staff submitted to the file with 'Site Plan Review' Decision on proposed project attached – Decision is dated May 10, 2017
- 05/18/2017 ZBA staff submitted to the file a copy of the Special Permit #45-89 granted for subject property
- 05/25/2017 Referral submitted to the file from the Director of Assessing with no comment
- 05/25/2017 Referral in the form of a letter dated May 25, 2017 from the Falmouth Fire Rescue Department with comments and recommendations regarding fire prevention for proposed project
- 06/17/2017 Town Engineering Department submitted to the file comments they submitted to the Planning Board for its 'Site Plan Review' dated April 21, 2017

Plans submitted by Applicant/Applicant's Representative

"Plan of Land Lots A, B and C" prepared for The Cape Club 125 Falmouth Woods Road, Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 15, 2017 – stamped and signed by Michael B. McGrath, P.L.S. with a Board date 'received' stamp of May 17, 2017;

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"Site Plan Existing Conditions Plan" prepared for The Cape Club 125 Falmouth Woods Road, Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 3 of 9

dated April 6, 2016 with a final revision date of 3/8/2017 – stamped and signed by Michael B. McGrath, P.L.S. with a Board date ‘received’ stamp of May 17, 2017;

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“Site Plan Wastewater Treatment Layout Plan” prepared for The Cape Club 125 Falmouth Woods Road, Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 5 of 9 dated April 6, 2016 with a final revision date of 4/18/2017 – stamped and signed by Michael B. McGrath, P.E. with a Board date ‘received’ stamp of May 17, 2017;

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“Cape Club – Golf Cottage” plans drawn by The MZO Group consisting of seven (7) drawings of Elevations, First Floor Plans, Second Floor Plans, Basement Plan (for 3 cottages with golf cart parking) – all with a Board date ‘received’ stamp of May 17, 2017;

“Cape Club – Gym/Fitness Center” plan drawn by The MZO Group – one (1) drawing dated 3/3/2016 showing Elevations, First Floor, Second Floor and Basement with Pool – plan has a Board date ‘received’ stamp of May 17, 2017;

“Cape Club – Waste Water Treatment Bldg” plan drawn by The MZO Group – one (1) drawing dated 3/3/2016 showing Floor Plan and Elevations – plan has a Board date ‘received’ stamp of May 17, 2017; and

“The Cape Club East Falmouth, MA” - ‘Commercial Landscape Site Plan’ drawn by KDTurner Design Landscape Architecture with a final date of 2/21/2016 and with a Board date ‘received’ stamp of May 17, 2017.

Hearing:

Kelly Durfee-Cardoza presented the plans for modification of Special Permit #45-89 for The Cape Club. The site consists of approximately 130 acres that is zoned Agricultural AA and consists of Lot A – 19.87 acres for commercial accommodations presented herein; Lot B – 81.3 acres for residential subdivision (future proposal); and Lot C – 28.69 acres for existing golf course. The golf course has existing amenities that include a clubhouse, tennis court, pool and putting green. She presented a power point presentation that reviewed the permits secured for the proposed project from MEPA, NHESP, MHC, the Cape Cod Commission, Falmouth Planning Board and DEP for Groundwater Discharge permit. Ms. Cardoza reviewed the proposed construction of ten (10) Golf Cottages (commercial accommodations) that will each have eight (8) rooms – four (4) on first floor and four (4) on second floor. She reviewed the existing conditions explaining that the tennis courts will be razed, the pool will be reconstructed, the existing pool shed will be removed, the parking will be expanded to accommodate the commercial units being proposed, and a Gym/Fitness Center will be constructed as well as a Wastewater treatment building. Three of the ‘cottages’ will have basement area in which golf carts will be stored. The proposed height of the cottages will be no more than 35’ in height, the height of the proposed Gym/Fitness Center is 24’10” and the height of the proposed Wastewater Treatment Building will be 17’ in height. Ms. Cardoza reviewed compliance with Wild Harbor Coastal Pond Overlay District under Article XXI of the Code of Falmouth citing the proposed Ruck System with GPC filter that will improve nitrogen loading to within 5.5mg/l to 4.14 mg. Parking was reviewed that shows a total of 281 parking spaces proposed and 49 spaces pursuant to Section 240-107 as a by right reduction that will be landscaped in the event said spaces will be needed in the future – 88 of the proposed parking spaces will be to service the commercial accommodations represented herein. The proposed project will be complete in three (3) phases within six (6) years.

The Board discussed plans with the applicant’s representatives including shared parking demand on site for functions, wastewater treatment and overall use of subject property. All concerns and questions were addressed.

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

Ron Dyer, of 23 Martingale Circle (Ballymeade development) spoke in support of the proposed project.

Alan Peretti of Fairway Pointe and President of the Fairway Pointe Association spoke in support of the proposed project.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 5 – 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 125 Falmouth Woods Road in East Falmouth contains 129.86 acres of Agricultural AA zoned land that is located within the Wild Harbor River Coastal Pond Overlay District, the Wild Life Migration Corridor and partially within the Search and Rescue Overlay. The applicant applied under Section(s) 240-38 A. and 240-107 and Article XXVII (Commercial Accommodations) of the Code of Falmouth to modify existing Special Permit #45-89 to construct ten (10) golf cottage buildings that will have a total of eighty (80) commercial accommodation units within (eight units in each building), expand existing parking, construct a new gym/fitness center, construct a wastewater treatment building, reconstruct existing pool, remove existing tennis courts and improve existing drainage and landscape. Special Permit #45-89 was granted as a modification of Special Permit #68-87. Permit #68-87 was granted to allow the creation of a 250 unit commercial accommodation facility that would have dining and meeting facilities as well, a private club and 597 parking spaces on Lot 9 that consists of 180+ acres. The Special Permit noted that the applicant is donating twenty (20) acres of land which will be conveyed to the Town of Falmouth following the issuance of the special permit; said land is to be used for affordable housing for the elderly or will remain as conservation land (Longshank 40B project was developed on a part of this acreage). Special Permit #45-89 requested modification of #68-87 to subdivide Lot 9 into three (3) separate lots – Lot 1, Lot 2 and Lot 3. Constructed on Lot 1 was to be a country club, pavilion with indoor tennis, exercise area and swimming pool. Proposed for Lot 2 was fourteen (14) commercial accommodation units – reduced from originally requested 250 units. Lot 3 was to be created for 32 multi-family dwelling unit. Also requested was to eliminate the condition for a wastewater treatment plant and to install instead, a subsurface sewage disposal system. It is noted that the country club with tennis court and pool has been constructed. The request before this Board is to modify Special Permit #45-89 by allowing ten (10) commercial accommodation buildings to house eight (80) units, construct a gym/fitness center, remove the tennis courts, reconstruct the existing pool, expand parking, install a tertiary level wastewater treatment system (Ruck) and improve and add landscaping and drainage. All work proposed and represented herein will be conducted on Lot A (previously known as Lot 1 in #45-89) which consists of 19.87 acres. Lot B is an 81.3 acre site for future construction of a 28 lot residential subdivision and also includes portions of the existing golf course. Lot C is a 28.69 acre site with the existing golf course. The division of the approximately 129.86 acre property into Lots A, B (including the 28 residential lots) and C have been approved by the Planning Board as part of its May 10, 2017 Definitive Plan Approval decision.

Section 240-38 of the Code of Falmouth – “Special permit uses.” states: *The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise within this chapter: Sub-section A. Commercial Accommodations (see Article XXVII).* Therefore the Board of Appeals is the special permit granting authority that reviews applications for commercial accommodations in an Agricultural AA zoned district.

Article XXVII of the Code of Falmouth – “Commercial Accommodations” requires that any commercial accommodations shall contain no arrangements of any description for private cooking or housekeeping, unless said commercial accommodation was lawfully in existence prior to August 26, 1983.

The Board finds through plans submitted and reviewed by this Board, and through testimony by the applicant's representative, that there are no cooking accommodations proposed or intended in any of the eighty (80) commercial accommodation units proposed herein on subject property. The Board further finds that a condition requiring that there will be no cooking facilities in any of the eighty (80) commercial accommodations approved herein will be included as part of the Board's decision (see below conditions).

The Board finds that the application before the Board of Appeals to modify existing special permit (#45-89) to construct commercial accommodations and amenities to commercial accommodation and existing clubhouse on subject property is properly before the Board. The Board further finds that the applicant submitted plans for site changes, new construction and alteration of existing parking and amenities and has taken into consideration referrals submitted and noted herein by various Town Departments. Furthermore, the Board finds that this approval shall not be considered approval for the 28 lot residential subdivision stated herein proposed for future development on Lot B as that aspect of the overall development plan has been approved by and is subject to the May 10, 2017 Definitive Plan Approval decision by the Falmouth Planning Board.

The Board finds that the Cape Cod Commission on March 2, 2017 issued a Development of Regional Impact Decision with conditions for the proposed project. The Board further finds that the Falmouth Planning Board issued a decision for 'Site Plan Review' dated May 10, 2017 – with conditions. Furthermore, the Board finds through applicant's representative that a Groundwater Discharge Permit will be filed with the Department of Environmental Protection (DEP) in the near future.

Section 240-107 of the Code of Falmouth – "Parking reductions." - Sub-section A 'Reduction by Right' allows an applicant to have a by right parking reduction of parking spaces based on what is required.

The Board further finds through testimony by the applicant's representative that the proposed parking spaces (shared) for the modification of the site represented herein is 281 parking spaces with the reduction by right spaces of 49. The Board finds based on the testimony, uses represented herein and the alterations and new construction added to the site, that the 49 spaces through by right is appropriate and that the 281 spaces will be appropriate for the site and the uses represented and discussed herein. Furthermore, the Board finds according to testimony by the applicant's representative, that any function held on site will be scheduled so that said event will not adversely impact parking capabilities on site and shared demands of said parking.

The Board finds through submission of plans and testimony by the applicant's representative, that the plans for the wastewater treatment system (Ruck System) will improve the nitrogen treatment of flow on site for proposed use. The Board further finds that the applicant will receive, prior to issuance of a Building Permit, approval from the Department of Environmental Protection (DEP) a Groundwater Discharge Permit for said Ruck System.

The Board finds through review of the "Site Plan Review" Decision from the Planning Board, that there is a proposed walking path along the existing driving range that will be required to have directional signage noting "Path Open to Public" and "Stay on Path" – the Town Planner will review locations of said signage prior to issuance of an Occupancy Permit.

The Board finds through submission of information from the applicant that out of the proposed eighty (80) commercial accommodations 1 – 2 buildings (8 – 16 units) will be constructed as well as the 28-lot planned residential development (Lot B) and the wastewater treatment facility will be constructed as Phase I in the first three (3) years. Phase II, which will be in years four (4) and five (5) will complete the construction of the commercial accommodation units. Phase III, year six (6), the gym/fitness center and pool will be completed.

The Board finds through review of a referral submitted to the Planning Board and forwarded to the Board of Appeals, that the applicant has appropriate stormwater and drainage management for proposed development on site.

The Board finds through testimony by the applicant's representative that the project will contribute \$90,511 (Ninety Thousand Five Hundred Eleven Exact Dollars) to Falmouth's creation of affordable units. The monies will be held by the Cape Cod Commission and administered to qualified applicants.

In addition to the above findings, the Board finds that the proposed development of commercial accommodations, gym/fitness center, parking and wastewater management building, as well as other alterations on subject lot and phasing of said project 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 development as the site has 19.87 acres of land, all proposed development is within the criteria of by law requirements.

B. The site is suitable for the proposed use as the property has an existing clubhouse, golf course and other amenities and that the proposed will be a benefit to the existing uses on subject property.

C. There may be slight impact on traffic flow and safety during the summer season due to the addition of commercial accommodations on site, which has been taken into consideration by this Board prior to approval.

D. The visual character of the subject property will be changed with improvement to wastewater, drainage and landscaping as proposed herein, however there is no impact on any view or vista from the roadway or abutting properties through this development.

E. The sewage disposal system will be approved by DEP and issued a ground water discharge permit prior to the issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system as the Board of Appeals received no referral from the Water Department for the proposed development.

G. The proposed modification of previous special permit to include the creation of commercial accommodations and amenities on subject property discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was Site Plan Review required by the Planning Board and the decision of the Site Plan Review has been submitted to the file and the Board has taken into consideration said decision and conditions issued by the Planning Board.

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 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Dugan 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 of Special Permit #45-89** to FWG, LLC (herein referred to as Applicant) under Section(s) 240-38 A., 240-107 and Article XXVII of the Code of Falmouth to construct ten (10) structures each with eight (8) units of commercial accommodations and request a parking reduction on subject property known as 125 Falmouth Woods Road, East Falmouth, MA. This special permit shall be subject to the following conditions:

1. The construction of the commercial accommodations, gym/fitness center, expansion of parking, wastewater treatment building, alterations to existing amenities and the six (6) year three (3) phasing of the development shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plan of Land Lots A, B and C” prepared for The Cape Club 125 Falmouth Woods Road, Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 15, 2017 – stamped and signed by Michael B. McGrath, P.L.S. with a Board date ‘received’ stamp of May 17, 2017;
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- "The Cape Club East Falmouth, MA" - 'Commercial Landscape Site Plan' drawn by KDTurner Design Landscape Architecture with a final date of 2/21/2016 and with a Board date 'received' stamp of May 17, 2017.

2. There shall be no kitchens whatsoever allowed in the ten (10) 'golf cottages' (80 units) approved herein which shall include no oven, no microwave, no hotplate or any other device that will cook or heat food.
3. 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.
4. The Applicant shall meet the requirements of the DPW Water Division.
5. 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.)
6. 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: **037-17 – Modifying Special Permit #45-89**

Applicant: **FWG, LLC of Norwood, MA**

Subject Property: **125 Falmouth Woods Road, East Falmouth, Massachusetts
Map 11, Section 01, Parcel 029, Lot 001B**

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 Modification of previous Special Permit #45-89 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

AUG - 2 2017

FALMOUTH TOWN CLERK

MD@10:45am

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.