

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 063-17

**APPLICANT/OWNER:** MARKANTONIS PROPERTIES LLC of Mashpee, MA

**SUBJECT PROPERTY:** 117 and 127 Main Street, Falmouth, Massachusetts  
**Assessor's Map:** Map 47A, Section 07, Parcel 064, Lot 001 (117 Main St)  
Map 47A, Section 07, Parcel 065, Lot 002 (127 Main St)

**DEED/CERTIFICATE:** Certificate 210898 – Lot 1 and 2 – Plan 24236-A

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of July 31, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-104, 240-105 and 240-107 of the Code of Falmouth regarding parking relative to a change of use on subject properties known as 117 and 127 Main Street, 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 September 28, 2017.
4. The public hearing was closed on October 5, 2017, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Edward Van Keuren and Associate Members Gerald Potamis and Robert Dugan (sitting as voting members) 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 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**

09/11/2017 Letter submitted to the file from Saint Barnabas Episcopal Church to Zoning Administrator dated September 7, 2017 (sent RRR) in opposition to a restaurant serving alcohol adjacent to the Church. Letter states they intend to erect signage and will tow cars as necessary.

- 09/18/2017 Letter submitted to the file from Allan DesRosiers of Mashpee to Board of Appeals dated September 12, 2017, stating support of Estia Restaurant.
- 09/25/2017 E-mail submitted to file from Paul Nazzaro of Eel River Road dated September 23, 2017 stating support of Estia Restaurant.
- 09/27/2107 E-mail letter submitted to the file from Melony Grady of East Falmouth to the Board of Appeals dated September 27, 2017 stating support of Estia Restaurant.
- 09/29/2017 E-mail submitted to the file from Cara Eaton to the Board of Appeals dated September 29, 2017 stating support of Estia Restaurant.
- 09/29/2017 E-mail submitted to the file from Linda Cohen to Board of Appeals dated September 28, 2017 stating support of the Estia Restaurant.
- 10/04/2017 Letter submitted to the file from Jay Zavala to Zoning Administrator dated October 3, 2017 stating support of Estia Restaurant with comments.
- 10/04/2017 Letter submitted to the file from Michael Kasparian, President & C.E.O. of Falmouth Chamber of Commerce to Board of Appeals dated October 4, 2017 stating support of Estia Restaurant.

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

- 09/28/2017 Information submitted to the file by Stephen O. McKenzie, the representative for Applicant, noting information on other restaurants along Main Street in Falmouth.
- 10/4/2017 Letter submitted to the file by Stephen O. McKenzie, the representative for Applicant, to the Zoning Administrator dated October 3, 2017 giving information on screening, lighting and restaurant capacity as requested by the Board at previous hearing.

**Letters/Referrals/E-mails from Town Departments**

- 08/10/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/10/2017 Referral submitted to the file from Planning Department staff with no comment
- 08/10/2017 Referral submitted to the file from Historical Commission staff with no comment
- 08/14/2017 Referral submitted to the file from Director of Assessing with no comment
- 09/05/2017 Referral submitted to the file from Town Engineering Department with standard comments and noting that the project must not direct any stormwater runoff to public property, abutters, or right of ways.

- 09/06/2017 Referral submitted to the file from Conservation Commission that states: *Only concern is drainage on property and how this can be improved. Wetlands just south of property – does current drainage flow into this wetland system to Siders Pond?*
- 10/05/2017 ZBA staff requested a copy of the Historical Commission’s ‘Certificate of Appropriateness’ for the renovation at 117 Main Street and submitted it to the file.

**Plans submitted by Applicant/Applicant’s Representative**

“Falmouth Estia Restaurant” drawn by Imai Keller Moore Architects – one drawing ‘Ground Floor Plan (Proposed)’ shows seating for proposed restaurant with a Board date ‘received’ stamp of September 27, 2017;

“Site Plan for #117 Main Street” prepared for Estia Restaurant in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 dated July 28, 2017 with a final revision date of 10/2/2017 – plan is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of October 2, 2017;

“Sewer Details and Profile for #117 Main Street” prepared for Estia Restaurant in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated May 30, 2017 – plan is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of July 31, 2017; and

“Estia Restaurant 117 Main Street Falmouth, MA” as drawn by Imai Keller Moore Architects consisting of Drawings A3.1 ‘Exterior Elevation dated July 21, 2017; Drawing A3.2 ‘Exterior Elevation’ dated July 21, 2017; Drawing D3.1 ‘Exterior Elevation Demo’ dated July 21, 2017; Drawing D3.2 ‘Exterior Elevation Demo’ dated July 21, 2017; Drawing A1.0 ‘Architectural Site Plan’ dated July 21, 2017; Drawing A1.1 ‘Basement Plan’ dated July 21, 2017; Drawing A1.2 ‘Ground Floor Plan’ dated July 21, 2017; and Drawing A1.3 ‘Second Floor Plan’ dated July 21, 2017 – all Drawings have a Board date ‘received’ stamp of July 31, 2017.

Hearing – September 28, 2017 (Hermann Room – Falmouth Library):

Mr. McKenzie was present on behalf of Applicant and reviewed the existing site that was formerly Eastern Bank for many years. The application represents a change in use and the application is therefore before the Board of Appeals pursuant to Section 240-105 of the Code of Falmouth. Mr. McKenzie informed the Board that the application has been before the Historic Commission and has received a Certificate of Appropriateness. He reviewed the setbacks and lot coverage requirements for this Business 1 zoned lot; that the property is being connected to the Town sewer; and the lot has sixteen (16) existing parking space, one being a handicap space that is located near the rear of the existing structure adjacent to an existing handicap ramp. Mr. McKenzie reviewed (and submitted) a list of businesses that have had a change to restaurant use along Main Street that were not required by the Building Commissioner to apply for a special permit; and noted that this is the only restaurant that has its own parking spaces on site. The original plan was for 212 seats for the restaurant but has been scaled back to 194 seats. He reviewed the parking requirements under Section 240-107 and the municipal and public parking in various locations along and/or just off Main Street.

Board asked questions of Mr. McKenzie relative to the application and plans submitted.

Chairman Hurrie asked if anyone present wished to speak in favor or in opposition to the application.

Peter Mili of 83 Allen Avenue stated support of the application noting that Estia Restaurant would be a welcome addition to the Town.

Donald Koundajkian of 71 Southview Way stated support of the proposed Estia Restaurant.

Peter French of 850 West Falmouth Highway stated he is representing St. Barnabas Church and said he has very strong reservations regarding the restaurant, citing parking, safety, noise, fumes, alcohol consumption near the church and children's play area and possible trespassing onto Church property.

The Board reviewed information and plans submitted and discussed concerns for the amount of proposed seating, parking, buffering and signage on subject property. Mr. McKenzie agreed to continue the hearing to October 5, 2017 to submit requested information. Ms. Bielan reiterated that it is the parking associated with the change of use from a bank to a restaurant that is before the Board and not the use.

Member Van Keuren made a motion to continue the hearing to October 5, 2017 at 6:30 PM in the Selectmen's Meeting Room in Town Hall. Member Murphy seconded the motion. Motion carried 5 – 0.

#### Continued Hearing – October 5, 2017:

Mr. McKenzie was present and reviewed the information he submitted as requested by the Board. He reviewed the proposed planting of arborvitae along the westerly (rear) property line adjacent to the Church's garage structure; the arborvitae plantings will be 6' in height and planted 3' to 4' on center. He reviewed the lighting as shown on the plan (three lights) that will be low level and will light the parking area without impact to abutting businesses and the lighting within the restaurant at the front of the building and at the south façade of the building where a patio is proposed (off parking area). Mr. McKenzie reminded the Board that in the off-season, seating within the restaurant will be approximately 130 seats – the two patios (one in front of building and the other off parking/drive area) will not be used, which is similar in size to many of the restaurants along Main Street.

The Board discussed plans and testimony.

Member Van Keuren made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 5 – 0.

Chairman Hurrie 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 117 and 127 Main Street in Falmouth contains 20,458 square feet of Business 1 zoned land that is located within the Siders Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-104, 240-105 and 240-107 of the Code of Falmouth regarding parking relative to a change of use on subject properties known as 117 and 127 Main Street. The subject property previously was an Eastern Bank facility; the proposed is a change in use to a 194 seat restaurant. Under Section 240-104 'Waiver of parking requirements' and Section 240-105 'Performance requirement' of the Code of Falmouth, requires that a change of use on downtown Main Street requires a special permit to show how the parking demand created by a change in use (Bank to a 194 seat restaurant) will be provided. Business 1 zoned district on Main Street and the uses along Main Street, having public parking spaces available at different sites along and off Main Street, need to weigh the expansion of retail activity or other uses, some of which may be exempted from parking requirements, however, Section 240-105, specifically, 'change of use' is not exempt from Section 240-104. Section 240-107 of the Code of Falmouth 'Parking reductions' – sub-section A. 'Reduction by right' allows a 25% reduction for parking spaces based on the number of spaces required for this restaurant with 194 seats that normally, if not in Business 1 district zone, would require 82 parking spaces, which in this case would be 20 parking spaces (leaving 62 required – minus 16 existing equals 46 additional spaces required). Sub-section B. allows a 'Reduction by special permit' if the Board determines that special circumstances such as shared use of parking based on peak demand times will render a lesser provision adequate for parking needs for a use.

The Board finds that the applicant is requesting a reduction in parking spaces beyond that of a parking reduction by right and the Board has taken into consideration the peak demand times of the businesses along Main Street – majority being retail and professional. The Board further finds that the proposed restaurant has sixteen (16) parking on its property and there is public parking in the downtown area to accommodate parking for the restaurant, as is the case of approximately fourteen (14) other restaurants/food establishments on Main Street in downtown Falmouth and that the majority of those restaurants have parking limited to five (5) or six (6) spaces on site. Furthermore, the Board finds that testimony by the applicant's representative (see submission to file by Mr. McKenzie) that other expansions of restaurants or businesses and change of uses along Main Street have not been required to come before the Board of Appeals and therefore the Board has determined that the parking on site and public parking in the downtown area is appropriate for the change in use in the application relative to parking.

The Board finds that there is a lot of pedestrian traffic on Main Street that may not travel to Main Street by a personal automobile and may be via public transportation, walking from nearby homes and motels and by bike. The Board further finds and agrees with the applicant's representative that the proposed restaurant will most likely not bring in 194 more individuals but will offer another venue as a choice for dining by individuals coming to visit the downtown area.

The Board finds that the applicant has reduced the number of seats in the restaurant and patio areas from 212 to 194 seats. The Board further finds through testimony by the applicant's representative that the off-season capacity of the restaurant will be approximately 134 seats as the two (2) proposed patios shown on the plans submitted, reviewed and noted herein, are seasonal (summer). Furthermore, the Board further finds through testimony by the applicant's representative that the management of the restaurant will suggest to employees to take public transportation or carpool to work to help limit the number of vehicles needing parking by staff.

The Board finds through testimony by the applicant's representative that the applicant is amenable to installing bollards, or bollard-like barriers along the easement area on the southerly (side) property line as a vehicle barrier to protect the safety of the outside seating area of adjacent restaurant (Osteria La Civetta). The Board further finds that the proposed lighting on site as shown on the plans noted herein is appropriate for the site and does not appear to impact the abutting restaurant patrons or the abutting church. Furthermore, the Board finds that the signage at the front corner of the building is appropriate and has been reviewed by the Historical Commission, as with other changes/alteration to the building, and approved.

The Board finds that the applicant submitted a plan showing proposed landscaping at the rear property line of subject property to reduce the noise, lights from vehicles and activity from subject property to abutting church. The Board further finds that the applicant, through applicant's representative, is amenable to installing a gate or fence at the northwest corner of subject property that shows as a 'path' from subject property to abutting church property so as to eliminate possible pedestrian traffic from one property to the other. Furthermore, the Board finds according to testimony by the applicant's representative, the intent to install signage on site that will read "Parking for Estia Customers Only" or something to the same effect.

In addition to the above findings, the Board finds that the proposed change of use from a bank to a restaurant 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 restaurant as it is in compliance with Section 240-68 A. and B. and Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned Business 1 and the restaurant use as presented would normally be a by right use except under Sections 240-104 and 105 of the Code of Falmouth.

C. There is no increase in the number of parking spaces on site and no change to the location of the existing driveway on site, however, the change of use from a bank to restaurant may impact traffic flow.

D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character by lighting; and there is no impact on any view or vista from the roadway or abutting properties as the existing building remains intact with slight exterior change.

E. The subject property is attached to the Town sewer.

F. There are adequate utilities to subject property by virtue of an existing business on site.

G. The proposed change of use on subject property 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 change of use on subject property relative to parking 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 Bielan 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 Markantonis Properties LLC (herein referred to as Applicant) under Section(s) 240-104, 240-105 and 240-107 regarding parking relative to a change of use on subject properties known as 117 and 127 Main Street, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The parking, floor plans of restaurant, lot coverage, setbacks and use of building shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Falmouth Estia Restaurant” drawn by Imai Keller Moore Architects – one drawing ‘Ground Floor Plan (Proposed)’ shows seating for proposed restaurant with a Board date ‘received’ stamp of September 27, 2017;
  - “Site Plan for #117 Main Street” prepared for Estia Restaurant in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 dated July 28, 2017 with a final revision date of 10/2/2017 – plan is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of October 2, 2017;
  - “Sewer Details and Profile for #117 Main Street” prepared for Estia Restaurant in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated May 30, 2017 – plans is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of July 31, 2017; and
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2. The applicant shall install a vehicle barrier or bollards along the ‘easement area’ on the southerly side of subject property for safety of the exterior use of the abutting property’s use (131 Main Street – Osteria La Civetta), said vehicle barrier will be shown on a revised “Site Plan” to be submitted to the Board of Appeals for approval prior to occupancy or use of proposed restaurant.

3. There shall be no more than 194 (one hundred ninety-four) seats allowed on subject property for the restaurant operation.
4. The applicant shall submit proposed signage and signage location for 'customer parking' on subject property to the Board of Appeals for approval prior to occupancy or use of proposed restaurant.
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. The Applicant shall meet the requirements of the DPW Water Division.
7. 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.)
8. 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:     **063-17**

Applicant:                   **MARKANTONIS PROPERTIES LLC**

Subject Property:           **117 and 127 Main Street, Falmouth, Massachusetts**  
                                  **Map 47A, Section 07, Parcel 064, Lot 001 (117 Main St)**  
                                  **Map 47A, Section 07, Parcel 065, Lot 002 (127 Main St)**

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, Vice Chairman, Board of Appeals**

RECEIVED

OCT 12 2017

FALMOUTH TOWN CLERK

*MD@12:08 pm*

**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.