

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 006-18  
**APPLICANT:** WCS, INC. of Falmouth, MA  
**OWNER:** New Bedford Bargain Store, Falmouth, MA  
**SUBJECT PROPERTY:** 225 Main Street, Falmouth, Massachusetts  
**Assessor's Map:** Map 47A Section 12 Parcel 088 Lot 000  
**DEED/CERTIFICATE:** Book 10037 / Page 136  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of January 11, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-160 A. of the Code of Falmouth to allow a 20' x 30' temporary tent on subject property known as 225 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 March 1, 2018.
4. The public hearing was closed on March 1, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren, Member Paul Murphy and Alternate Gerald Potamis 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 present at the hearing to review and discuss 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**

02/22/2018 Letter submitted to the file from Joseph and Sandra Botbol of 60 Curtis Street, Falmouth to the Board of Appeals stating opposition citing tent takes up space in parking lot and concern with emergency responders taking longer to get to their property.

02/26/2018 Letter submitted to the file from Michael J. and Rebecca Greenberg of 66 Curtis Street Falmouth, MA and St. Augustine, FL

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

None

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

- 01/12/2018 Referral submitted to the file from the Planning Department staff with no comment
- 01/16/2018 Referral submitted to the file from the Director of Assessing with no comment
- 01/18/2018 Referral submitted to the file from the Water Superintendent – no water required
- 01/18/2018 Referral submitted to the file from Falmouth Fire Rescue with no comment
- 02/15/2018 Referral submitted to the file from Town Engineering Department with no comment

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

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

“Certified Plot Plan” prepared for La Cucina Sul Mare 237 Main Street Falmouth, Massachusetts as drawn on a plan by BSS Design, Inc. dated July 11, 2005 – Plan is stamped, signed and date by Thomas Jackson Bunker, PLS on 2/27/2007 and has a Board date ‘received’ stamp of January 11, 2018;

Applicant submitted a letter regarding tent frame, materials of tent and structural integrity of the tent – letter has a Board date ‘received’ stamp of January 11, 2018; and

Applicant submitted a photo of the 20’ x 30’ tent on site with a Board date ‘received’ stamp of January 11, 2018.

Hearing:

Mark Cilfone, applicant and owner of La Cucina Sul Mare reviewed the proposed seasonal tent that he has received approval of for the last twelve (12) years. He explained that the tent is only used for dining and is not used after kitchen is closed at 10:00 PM. The tent is erected just before Memorial Day and removed after Columbus Day. Mr. Cilfone asked the Board to extend the timeframe of the tent until after the Downtown Christmas stroll as it draws a lot of people downtown and the tent would be valuable at that time.

The Board discussed plans with Mr. and Mrs. Cilfone. All concerns and questions were addressed.

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

Maureen Kelly of 20 Harbor Avenue in Falmouth spoke in support noting that she recommends La Cucina to her patrons and has never heard complaints.

Member Bielan made a motion to close the hearing. Member Van Keuren 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 225 Main Street in Falmouth contains 27,819 square feet of Business 1 zoned land that is located within the Historic District in Downtown Falmouth. The structure on subject property has the subject restaurant within it as well as other retail businesses. The applicant applied under Section(s) 240-160 A. of the Code of Falmouth to allow for a seasonal tent to be erected during the summer season for additional seating. The applicant has had the tent erected during the summer season for the past twelve (12) years (2006) from Memorial Day to Columbus Day. The tent is protected by stanchions and substantial sized planters. It does not take up parking spaces (see plan).

The Board finds that a written communication from the owners of the property has been submitted to the file wherein they approve this request for erection of a temporary tent for seasonal use on property owned by them under New Bedford Bargain Store.

Section 240-160 “Temporary and conditional structures and uses” of the Code of Falmouth – Sub-section A. states: *Temporary and conditional structures and uses that do not conform to the regulations herein prescribed may be allowed by special permit, provided that no special permit shall be for more than a one-year period and further provided that no permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL C. 40A.*

The Board finds that the applicant meets the requirements under Section 240-160 A. as the tent is a temporary structure and shall only be erected for the timeframe approved by the Board herein. The Board further finds that the requirements of said section require the applicant to come to the Board every year for the temporary structure if continued use is desirous. The Board has herein allowed the applicant to request administrative approval for the next five (5) years through the Zoning Administrator as long as there have been no complaints submitted to the Board relevant to the tent; on the sixth year the applicant shall submit an application for a hearing process with the Board of Appeals which shall include notice by the Board of Appeals to all abutters.

The Board understands that the subject restaurant is one of several commercial operations within the existing structure and the other commercial entities existing also have use of the driveway and parking at the rear of subject structure. Further, the Board finds that no evidence was submitted to the file to substantiate private property (subject property) interest in lot to access the abutters’ properties located on Curtis Street (see letters submitted to file) and that such information is beyond the purview of the Board. Town GIS map shows that access to Curtis Street is via Prospect Street and not the private driveway of 225 Main Street.

The Board finds that the proposed tent is a temporary structure and shall be benefit to the restaurant on subject property known as La Cucina Sul Mare and owned by the applicants named herein. The Board further finds that the applicants requested, and the Board herein approved, to extend the normal timeframe previously conditioned from Friday before Memorial Day to Tuesday after Columbus Day, to Friday before Memorial Day to the Monday after the Christmas Stroll.

The Board further finds that the previous Special Permit #25-07, allowed for eight (8) tables with twenty-five (25) people at one time within the tent and that the applicant requested an increase at said 2007 hearing. The Board further finds that there was no response by the Board in a form of condition regarding the increase to allow for more people at the approved eight (8) tables within said tent. Furthermore, to address the issue, the Board herein increases the number of people allowed at one time within the tent to thirty-five (35) and table count will remain at no more than eight (8).

The Board finds that there is no intent to have live music or entertainment within the tent or outside area.

The Board finds that the size of the tent proposed is 20' x 30'. The Board further finds that the applicant proposes use of the tent on a daily basis from 11:30 AM to 10:00 PM.

The Board finds that a stanchion or barrier protecting the tent poles from parking vehicles is on site with planters surrounding the sides of the tent (see photo in file). The Board further finds that the tent shall receive Fire Department approval every year the tent is erected.

The Board has weighed the beneficial and adverse effects of the proposed temporary seasonal structure 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 Bylaw.

In addition to the above findings, the Board finds that the proposed seasonal tent 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 seasonal tent as no parking spaces are used to erect the tent and that the tent shall be erected by benefit of a building permit.
- B. The site is suitable for the proposed use as the property is zoned Business 1 and the proposed tent will be an extension of the existing restaurant and not conduct a separate business.
- C. There will be no impact on traffic flow and safety due to the tent being erected at the rear of the building as there are protective barriers in place around the tent.
- D. The visual character of the subject property will be unchanged as the tent is located off the rear door of the restaurant; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The restaurant is served by Town Sewer.
- F. There are adequate utilities to subject property by virtue of existing commercial uses.
- G. The proposed seasonal tent 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 temporary seasonal tent 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 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 WCS, Inc. (herein referred to as Applicant) under Section(s) 240-160 A. of the Code of Falmouth to allow a temporary tent on subject property as approved herein on subject property known as 225 Main Street, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The 20' x 30' tent structure shall be erected and located on subject property (rear of building) as represented to the Board and shown on a photo submitted to the file with a Board date 'received' stamp of January 11, 2018.
2. The tent is allowed on subject property only from Friday before Memorial Day of 2018 to the Monday after the Town's Christmas Stroll of 2018.
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 Special Permit will be good for the dates noted herein for the 2018 year pursuant to Section 240-160 A. of the Code of Falmouth.
5. If the Applicant is desirous of erecting the tent for the 2019 season, they shall submit an application for administrative approval by the Zoning Administrator no later than March 30, 2019. In the event of a complaint filed with the Board of Appeals, the applicant shall be required the following year (based on year of complaint) to file an application to the Board of Appeals for the Special Permit with notification to abutters. The Zoning Administrator may approve the temporary tent administratively each summer season through 2022, at which time an application shall be filed with the Board of Appeals no later than March 1<sup>st</sup> of 2023.
6. This approval shall be for the Applicant represented herein and shall not be transferred with ownership of the restaurant or any other business at subject property.

7. The tent approved herein shall be no larger than 20' x 30' and shall be erected through a building permit and approved by the Fire Department. The Applicant shall install stanchions or a barrier along the southwesterly (rear) façade of the tent to protect the tent poles from being hit by parking vehicles. Said stanchions or barriers shall be approved by the Fire Department and/or Building Department.
8. The hours of operation for the tented area shall be 11:30 AM to 10:00 PM Sunday through Saturday.
9. There shall be no live entertainment or music allowed in the tented area.
10. There shall be no more than eight (8) tables allowed in the area represented herein and no more than thirty-five (35) people shall be allowed within the tented area at one time.
11. Any deviation, no matter how minor, from plans submitted and approved by this Board shall be submitted to the Board for approval prior to implementation of said change. The Zoning Administrator may administratively approve minor changes.
12. 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.)
13. This permit shall lapse on the Monday after the Town Christmas Stroll which is approximately the first weekend of December 2018.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **006-18**

Applicant: **WCS, INC. of Falmouth, Massachusetts**

Subject Property: **225 Main Street, Falmouth, Massachusetts  
(Specifically La Cucina Sul Mare Restaurant – Mark/Cindy Cilfone)  
Map 47A Section 12 Parcel 088 Lot 000**

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, Acting Chairman, Board of Appeals**

RECEIVED

MAR - 9 2013

FALMOUTH TOWN CLERK

*APC 1:20 PM*

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**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.