

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 061-17

APPLICANT/OWNER: CHAPPY, LLC of North Falmouth, Massachusetts

SUBJECT PROPERTY: 100 Dillingham Avenue, Falmouth, Massachusetts
Assessor's Map: Map 38, Section 10, Parcel 028, Lot 083

DEED/CERTIFICATE: Certificate 201454 – Plan 18441R – Lot 83

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 26, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-51 A. (5) of the Code of Falmouth to construct an addition to the existing building creating five (5) apartment units and commercial space and to construct one (1) additional building on site creating two (2) apartment units and commercial space on subject property known as 100 Dillingham Avenue, 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 14, 2017.
4. Clerk Kimberly Bielan recused from the hearing process for this applicant.
5. The public hearing was closed on September 14, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting member) voted to direct the Zoning Administrator to draft an affirmative Decision for review by the Board at an open meeting to be held on September 28, 2017.
6. On September 28, 2017 the voting members reviewed and discussed the draft Decision. Board members made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
7. The applicant was represented at the hearing by Attorney Laura M. Moynihan, who reviewed and discussed proposed plans with the Board along with Michael Borselli, P.E., project engineer and property owner Warren Dalton, Principal of Chappy, LLC.
8. 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

09/14/2017 E-mail letter from Leslie McDonald of 96 Queen Street, Falmouth – letter contained correspondence she submitted to other Boards on certain dates. Information submitted was on the historical aspect of the Nimrod building

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

07/26/2017 Attorney Moynihan submitted, on behalf of the applicant, an application, fee, authorization for representation, existing and proposed plans, and color renderings of proposed building elevations and Runoff Calculations for subject property from Falmouth Engineering, Inc.

08/16/2017 Attorney Moynihan submitted to the file a list from Saltonstall Architects, dated August 9, 2017, of proposed materials and components for the proposed project

08/29/2017 Attorney Moynihan submitted a letter to the file from her to the Planning Board dated August 29, 2017 regarding revised site plans, revised drainage calculations and other site information

09/11/2017 An e`-mail dated September 11, 2017 from Attorney Moynihan to Brian Currie Town Planner with the Zoning Board of Appeals copied was submitted to the file – the e-mail noted communication from Water Superintendent regarding required water service to subject property

09/14/2017 Attorney Moynihan submitted to the file at the hearing square footage of each building and a proposed condition for parking on-site

Letters/Referrals/E-mails from Town Departments

07/27/2017 Referral submitted to the file from the Planning Department states: *The applicant filed a Site Plan Review application with the Planning Board and is scheduled for the August 29, 2017 agenda.*

07/31/2017 Referral submitted to the file from the Director of Assessing with no comment

08/10/2017 Referral submitted to the file from Falmouth Fire Rescue in letter form dated August 8, 2017 noting 780 CMR Regulations and MGL Chapter 148 Regulations for proposed use of buildings and also notes that a fire hydrant and emergency vehicle access was addressed at Site Plan Review (Planning Board meeting)

09/06/2017 An e-mail from Conservation Commission to Zoning Administrator dated September 6, 2017 was submitted to the file – e-mail notes presence of wetland resource area across the street - and the importance of maintaining stormwater runoff on site

09/13/2017 Planning Department submitted to the file a copy of the Site Plan Review Decision (that includes Design Review findings) for the proposed project – Decision dated September 13, 2017

Plans submitted by Applicant/Applicant's Representative

“Existing Conditions Plan for 100 Dillingham Avenue” prepared for Chappy LLC in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 6 dated July 6, 2017 – stamped, signed and dated by Gary S. Labrie, P.L.S. on 7/25/2017 with a Board date ‘received’ stamp of July 26, 2017;

“Layout Plan for 100 Dillingham Avenue” prepared for Chappy LLC in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 6 dated July 6, 2017 with a final revised date of 8/29/2017 – stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of August 29, 2017;

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“Standard Details for 100 Dillingham Avenue” prepared for Chappy LLC in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 6 of 6 dated July 6, 2017 - plan is stamped, signed and dated by Michael J. Borselli, P.E. on 7/25/2017 and has a Board date ‘received’ stamp of July 26, 2017;

“Nimrod Property - Existing Conditions” as drawn by Skaala Design Corporation consisting of Drawings entitled ‘Exist. 1 through Exist. 3’ with a date of 11/19/2013 and with a Board date ‘received’ stamp of July 26, 2017;

“Nimrod Renovation & Addition 100 Dillingham Avenue in Falmouth, MA” architectural plans drawn by Saltonstall Architects consisting of Drawing A-1.1 ‘First Floor Plan’ dated 7/24/2017, Drawing A-1.2 ‘Second Floor Plan’ dated 7/21/2017, Drawing A-2.1 ‘Exterior Elevations’ dated 7/2/2017 and Drawing A-2.2 ‘Exterior Elevations’ dated 7/21/2017 – all plans with a Board date ‘received’ stamp of July 26, 2017; and

“Nimrod Mixed Use Building 100 Dillingham Avenue Falmouth, MA” architectural plans drawn by Saltonstall Architects consisting of Drawing A-1.1 ‘First Floor Plan’ dated 7/24/2017, Drawing A-1.2 ‘Second Floor Plan’ dated 7/21/2017, Drawing A-2.1 ‘Exterior Elevations’ dated 7/21/2017 and Drawing A-2.2 ‘Exterior Elevations’ dated 7/21/2017 – all plans with a Board date ‘received’ stamp of July 26, 2017.

Hearing:

Attorney Laura Moynihan explained to the Board that the application is to allow seven (7) apartments on subject property – five (5) currently exist. This is a Business 3 zoned lot and certain commercial uses are allowed by right. She then reviewed the existing building known as “The Nimrod”, until the last few years, was a restaurant with five (5) apartments on the second level. The building was named after the British Brigantine ‘Nimrod’ that fired on the shores of Falmouth and struck this structure which at the time was a residence. The ‘Nimrod’ building was moved from the shores of Falmouth (Surf Drive) to its current location on Dillingham Avenue; it is on the Town’s Cultural Resource list. The building will be renovated and not demolished. In addition to the existing Nimrod building, a second building will be constructed to create four (4) retail spaces on the first floor and two (2) apartments on the second floor. Total number of apartments on subject property will be seven (7) and total number of commercial spaces will be six (6). Attorney Moynihan reviewed associated parking for mixed use on site, which meets the criteria set forth in the Code of Falmouth and submitted a square footage calculation sheet for said uses. She noted that the Planning Board has issued a ‘Site Plan Review’ Decision for the proposed plan before this Board and it has been submitted to the file.

The Board reviewed the plans and discussed proposed with Attorney Moynihan and project engineer Michael Borselli, P.E. of Falmouth Engineering, Inc. All concerns and questions were addressed.

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

Robert Kinchla of 110 Dillingham Avenue, spoke on concerns he has with parking and traffic flow through the site, and the ‘lack’ of handicap accessible apartments.

Richard Batchelor of 110 Dillingham Avenue spoke on tenant parking and asked if the ‘hole’ from the cannon ball will be preserved in the ‘Nimrod’ building.

Ed Haddad, Commissioner on Town of Falmouth Historic Commission, made suggestions as to have all parking in the rear of the ‘Nimrod’ building for better visual of the building.

David MacDonald of 171 Gifford Street, stated concern with air conditioning units’ locations and noise generated.

Malcolm Donald of Ambleside Drive asked if the project would be going before the Historic Commission.

Kathleen Murray of 110 Dillingham Avenue suggested that if second building was smaller they could have more parking.

Attorney Moynihan stated that there is no requirement for the project to go before the Historic Commission and that Historic Commission representatives had reviewed the plans with Mr. Dalton in the plan development phase. Attorney Moynihan stated that the hole that was made by the cannonball in the War of 1812 would be preserved and that the property owner will review location of proposed air conditioning units on site. Mr. Borselli addressed the concern of parking and traffic flow made by Mr. Kinchla.

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

Chairman Foreman closed the hearing.

The Board members discussed the application and proposed project. Member Hurrie made a motion to direct the Zoning Administrator to draft a favorable decision that the Board can review and vote at a future meeting date (9/28/2017). Member Van Keuren seconded the motion. Motion carried 5 – 0.

OPEN Meeting - September 28, 2017:

The Board reviewed and discussed the proposed draft decision. Chairman Foreman is absent this date. Quorum of voters is four (4).

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 100 Dillingham Avenue in Falmouth contains 56,210 square feet of Business 3 zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth (pre-existing nonconforming setback from parking to property lines) and Section 240-51 A. (5) of the Code of Falmouth (multifamily use in a Business zoned district) to allow a total of seven (7) apartment units on subject property. There is an existing nonconformity of a setback from the parking to the rear property line that exists at 2' and at the westerly side yard property line at 8' wherein 15' is now required from any property line where parking area is used for business or marine uses that abut any existing residential zoned property under Section 240-109 E. of the Code of Falmouth. Based on testimony there is also five (5) apartments in the existing 'Nimrod' building that have existed many years that may be pre-existing nonconforming depending on the date of said units creation – this was not discussed during hearing process and is not a pre-requisite to an approval. Multifamily use in a Business zoned district requires a special permit; the applicant applied under Section 240-51 A. (5) that states the Board should find if the public good will be served, that the business zone area would not be adversely affected, that the uses permitted in this zoned would not be noxious to a multifamily use and that the density of any approved proposal shall not exceed six (6) units per acre. The Board finds that the project as presented meets these standards and requirements.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the pre-existing nonconforming parking setbacks have existed on subject property for many years, possibly before Town Meeting vote on Section 240-109 E. of the Code of Falmouth. The Board further finds that due to the existing building that will remain, the nonconforming parking setbacks at the property lines are not substantially more detrimental than the existing parking and will have no adverse impact. Furthermore, the Board finds that the additional parking spaces proposed to accommodate additional commercial space and apartments will be in compliance with Sections 240-108 and 109 of the Code of Falmouth.

The Board finds that pursuant to Section 240-107 of the Code of Falmouth, the applicant is utilizing the 'Reduction by right' bylaw (240-107 A.) for the spaces designated as business and professional, and reducing the required 53 parking spaces to 47 actual parking spaces. The Board further finds that the plan entitled 'Layout Plan 100 Dillingham Avenue' – Sheet 2 of 6, drawn by Falmouth Engineering, Inc. with a final revision date of 8/29/2017 does show parking spaces 48 through 53 (reduction by right spaces) in the event they will be required in the future.

The Board finds that this Board did not receive a referral from the Engineering Department regarding draining, lighting, parking and landscaping; however, it is our understanding (Board) the Engineering Department did send a referral to the Planning Board for their review under 'Site Plan Review'. The Board further finds that the Planning Board, after review, issued a 'Site Plan Review' Decision on September 13, 2017 after taking into consideration comments from the Engineering Department, Fire Department and Utilities Department. Furthermore, the Board of Appeals has reviewed the 'Site Plan Review' Decision and will incorporate it as a condition herein.

The Board finds pursuant to Section 240-51 A. (5) of the Code of Falmouth that the seven (7) apartments proposed for subject property meet the density requirements of no more than six units per acre (7,260 sf per unit) as the subject property is 56,210 square feet in size and seven (7) units would calculate to 50,820 square feet. The Board further finds through testimony by the applicant's representative that there will be no designated resident parking spaces and that the parking requirements for the commercial businesses are adequate based on the types of businesses on site the applicant is anticipating.

The Board finds through testimony by the applicant's representative, in response to an interested party's question on the 'hole by the cannonball from the 1812 War', will be preserved. The Board further finds through testimony by the applicant's representative, the structure is not on the historical registry, the subject property is not within a historical overlay and that the structure is listed on the Town's Cultural Resource list in the event of demolition of said structure, which is not the case as the 'Nimrod' building will be renovated and not demolished as stated herein.

The Board finds through plans submitted that there will be a total of eleven (11) bedrooms on subject property (see plans and septic detail sheet "Standard Details" Sheet 6 of 6 dated July 6, 2017). The Board further finds that no referral was submitted to the file from the Board of Health regarding approval or review of the septic system proposed for subject property and the mixed use thereon. However, the Board of Health is required to review all plans for approval prior to issuance of a Building Permit and in the event a change regarding the apartments is necessary, the applicant will contact the Board of Appeals as conditioned herein.

In addition to the above findings, the Board finds that the proposed mixed use 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 buildings and number of commercial and apartment units as all requirements for parking, septic and number of apartments is in compliance with the Code of Falmouth as noted above.

B. The site is suitable for the proposed use as the property is zoned Business 3 and has been reviewed under the criteria set forth in said Business District and any other related standards of the bylaws necessary to review for the proposed mixed use project on subject property.

C. There may be a slight change on the impact of traffic flow and safety to and from the subject property through the proposed change from restaurant and apartments to commercial space and residential use although it appears to be minor; and there was previously two (2) driveways accessing subject property and there will remain two (2) driveways on said property with an improvement in the flow of traffic and parking on site.

D. The visual character of the subject property will be improved through clean up and new construction with landscaping; and there is no impact on any view or vista from the roadway or abutting properties. It is noted that there is a residential development (Wise Living – 55+) at the rear of the property and some residents were present and spoke at the hearing.

E. The sewage disposal system for the proposed mixed use on subject property, as noted in the above findings, will be reviewed and approved by the Board of Health prior to the issuance of a building permit.

F. There is an existing building on subject property, however, with the changes requested in this applicant and lack of a referral submitted by the Water Department for this application, the applicant will be required to file with the Town Water Department regarding possible upgrade and expansion of existing water service.

G. The proposed mixed use development discussed and represented herein will have no effect on the supply of affordable housing inventory in Falmouth, however, testimony by the applicant's representative was that the apartments approved herein are targeted as work force housing.

H. There was a Site Plan Review Decision submitted to the file by the Planning Department which the Board of Appeals has reviewed and adopted as a condition herein.

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 mixed use 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 Dugan 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 **4 – 0 to Grant a Special Permit** to Chappy, LLC (herein referred to as Applicant) under Section(s) 240-3 and 240-51 A. (5) of

the Code of Falmouth to construct an addition to the existing building creating five (5) apartment units and commercial space and to construct one (1) additional building creating two (2) apartment units and commercial space for a total of seven (7) multifamily dwelling units on subject property known as 100 Dillingham Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The renovation of existing 'Nimrod' building, construction of new building, height of buildings (2), parking, septic, drainage, landscaping and use of buildings shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

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Elevations' dated 7/2/2017 and Drawing A-2.2 'Exterior Elevations' dated 7/21/2017 – all plans with a Board date 'received' stamp of July 26, 2017; and

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2. There shall be no more than seven (7) residential apartments allowed on subject property.
3. There shall be no more than eleven (11) residential bedrooms allowed on subject property.
4. Parking spaces shall be as shown on the site plans noted in Condition 1 above. Parking shall be used for residential uses, and for business and professional uses allowed under the Zoning Bylaw with the same or lesser parking requirements or uses as permitted under the Zoning Bylaw taking into account the parking then available on the site to allocate to such uses given all existing uses pursuant to Section 240-109 of the Code of Falmouth.
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 Board of Appeals or the Zoning Administrator.
6. Any proposed use at the subject premises within the commercial space for a restaurant, coffee shop, ice cream store or fast food operation shall require prior review by the Zoning Administrator to determine if modification of this decision is necessary by the Board of Appeals for such uses.
7. The Applicant shall meet all requirements of the DPW Water Division.
8. 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.)
9. 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: **061-17**

Applicant: **CHAPPY, LLC of North Falmouth, MA**

Subject Property: **100 Dillingham Avenue, Falmouth, Massachusetts
Map 38, Section 10, Parcel 028, Lot 083**

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 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

SEP 29 2017

FALMOUTH TOWN CLERK

9:50 AM

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.