



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 097-18

APPLICANT/OWNER: Captain's Quarters at Surfside Resort Condominium Association
241 Grand Avenue, Falmouth, Massachusetts

SUBJECT PROPERTY: 241 Grand Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 20, Parcel 0016, Lot 000

DEED/CERTIFICATE: Book: 12673 Page: 260

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed with the Zoning Board of Appeals on October 16, 2018, requesting a Special Permit/modification to Special Permit 126-98/Variance, pursuant to Section(s) 240-3 and 240-203 of the Code of Falmouth, to construct an elevator, proposed to exceed 35 feet of height, at 241 Grand Avenue, Falmouth, Massachusetts (the "Premises").
2. Notice was duly given, as required by M.G.L. Ch. 40 A, § 11, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list.
3. The advertised public hearing was opened on December 13, 2018. Present for the Zoning Board of Appeals were Terrence J. Hurrie (Chair), Paul Murphy, (Member, and Acting Clerk), Gerald Potamis (Associate Member) and Robert B. Dugan (Associate Member). Board members Kenneth H. Foreman, and Edward Van Keuren were absent. Associate Members Gerald Potamis and Robert B. Dugan were appointed voting members. Attorney Robert H. Ament, Ament Klauer LLP, 39 Town Hall Square,

Falmouth, MA, appeared before the Board, and requested that the hearing be continued to a future date, when a full contingent of Board members were present.

4. No testimony was received. A motion was made by Mr. Dugan, and seconded by Mr. Potamis, to continue the hearing to January 17, 2019, at 6:30 p.m. The Board voted unanimously to continue the hearing. Notice of the continuation was posted at the Town Clerk's office, and on the Town's website.

5. On January 17, 2019, the continued public hearing was opened. Members present were Terrence J. Hurrie, Kenneth H. Foreman, Edward Van Keuren, Gerald Potamis and Robert Dugan ("the Board"). Member Paul Murphy was absent.

6. Mr. Ament appeared before the Board, to present the case. He stated that the Applicant no longer requested a variance, as the amended plans for the elevator (dated January 9, 2019), comply with the height limitation.

7. The public hearing was closed on January 17, 2019, wherein the Board made a decision to grant the Special Permit with conditions.

8. Minutes of the meeting are on file with the Zoning Board of Appeals.

9. The documents and information received by the Zoning Board of Appeals, are on file in the office at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- None

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

- October 11, 2018 letter of authorization for representation, signed by Lillian Curran
- "InnSeason Resort – Captain's Quarters: Proposed Elevator Addition", prepared by Andrew P. Borgese, Integrata Architecture, dated October 15, 2018
- October 15, 2018 letter from Robert H. Ament, 39 Town Hall Square, Falmouth, MA

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 10/29/18
- Conservation Commission, no comment, dated 10/22/18
- Board of Health, no reply
- Water, no comment, dated 10-18-2018
- Assessors, comments, dated 10/22/18
- Fire Department, no comments, dated 10/18/18
- Planning, no comments, dated 10/17/18

Plans submitted by Applicant/Applicant's Representative

- "Site Plan of Proposed Elevator, prepared for Captains Quarters at Surfside Resort, #241 Grand Avenue, Falmouth, MA", Sheet 1 of 2, prepared by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, MA, dated September 11, 2018
- "Site Plan (Construction Details) of Proposed Elevator, prepared for Captains Quarters at Surfside Resort, #241 Grand Avenue, Falmouth, MA", Sheet 2 of 2, prepared by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, MA, dated September 11, 2018
- "Elevator Addition, Innseason Resort – Captain's Quarters, 241 Grand Ave., Falmouth, MA", including sheets A101, dated 07/19/18, A102, dated 07/23/18, A104, dated 09/19/18, CS-1, dated 09/04/18, A105, dated 05/31/18, A106, dated 06/06/18, A107, dated 06/06/18, and A108, dated 09/19/18, all prepared by Integrata Architecture, LLC, 419 Palmer Ave, Suite 200, Falmouth, MA.
- "Elevator Addition, Innseason Resort – Captain's Quarters, 241 Grand Ave., Falmouth, MA", including sheets CS-1, A106, A107, and A108, revision dated 9 January 2019, prepared by Integrata Architecture, LLC, 419 Palmer Ave, Suite 200, Falmouth, MA.

January 17, 2019 Hearing:

Appearing before the Board was Mr. Ament. He reported that the Premises was developed as a motel in 1954. Following a special permit in 1998, a third floor was added, and the development became a condominium, with 33 units. Mr. Ament noted that the structure was conforming at the time it was built, where the By-Law allowed 35% lot coverage for commercial accommodations. He stated that the current request is to install an elevator, within a 10.5-foot by 26.1-foot space, at the northwest corner of the main building. The proposed location is presently an existing driveway, running between the two buildings on the Premises. The elevator is sought specifically to provide access for aging owners and persons with disabilities. Mr. Ament noted that this proposed change would not be more detrimental to the neighborhood, and that providing handicapped access and parking constituted an improvement.

Mr. Ament stated that the elevator installation would result in a modest increase in lot area coverage at 35.6%. The proposed elevator space will include a lobby, an elevator shaft, and space for a machine room. Mr. Ament reported that the elevator design had been modified, post the original submission, to an alternate flat roof design, thereby no longer requiring a variance, to exceed the height limitation.

Mr. Ament stated that where the driveway between the two units was eliminated, two parking spaces would be added, in addition to the elevator installation. There will be a landscaped walkway created between the two buildings. Steven Furrer, manager at 241 Grand Avenue, noted that there are typically four staff, plus residents on site, and that parking is always an issue. He reported that the space between the two buildings was currently paved, and that the change to installation of an elevator, and creation of two parking spaces, would not create new impervious surface that would impact total lot coverage.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. No one further appeared on the petition.

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

Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted for the hearing, and made the following findings:

The applicant applied under Section(s) 240-3 and 240-203 of the Code of Falmouth, to allow construction of an elevator for Building #1, at 241 Grand Avenue, Falmouth, Massachusetts (the "Premises"). The Premises comprises 42,089 square feet of area, in Residence C zoned land. The Premises has 147.87 feet of frontage on Grand Avenue, 293.27 feet of frontage on Worcester Avenue West, 277.13 feet of frontage on Indiana Avenue, and 149.26 feet of frontage on Nantucket Avenue. Building #1 is sited 8.7 feet from the south, 15.2 feet from the west, and 60 feet from the east lot lines. Building #2 is over the westerly lot line by 0.1 feet, is sited 6.3 feet from the north, and 71.6 feet from the east lot lines. Building #2 is approximately 20 feet from Building #1. The lot coverage by structures is 35%, and will increase to 35.6% with the installation of the elevator. The lot coverage by structures, paving and parking is 82.5%, and proposed to be 82.3%, per the site plan. The Premises is nonconforming due to insufficient lot area, the existing encroachments of Building #1 and Building #2 into the street and side lot lines, and the lot coverage by both structures, and structures, paving and parking.

The Board found that the proposed changes to the pre-existing nonconforming condominium were not substantially more detrimental to the neighborhood than the existing condominium development.

In addition to the above findings, the Board finds that the proposed elevator will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as 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 elevator, with the lot coverage by structures being increased minimally, from 35 % to 35.6 %. The elevator will provide accessibility for disabled persons.
- B. The site is suitable for the proposed use, as the property is zoned residential, and has been used commercially for lodging since its inception.
- C. There will be no impact on traffic flow and safety; two handicapped parking spaces are being added on the Premises, and a curb cut added on Nantucket Avenue, in response to a Fire Department request.
- D. There does not appear to be any impact on the visual character of the neighborhood, or view or vista from the roadway, or abutting properties, with the elevator being tucked between the two existing buildings, and the total height remaining the same.
- E. There were no comments from the Board of Health and the Water Department related to the proposal.
- G. The elevator 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 in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed elevator at the Premises, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Mr. Potamis made a motion to grant the Special Permit with conditions. Mr. Van Keuren seconded the motion; with a unanimous 5-0 vote.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0, to grant a special permit under Section(s) 240-3 and 240-68 of the Code of Falmouth, to allow installation of the 10.5-foot by 26.1-foot elevator. The variance request is hereby withdrawn. This special permit shall be subject to the following conditions:

1. The elevator shall be substantially as shown on the plans submitted and reviewed by the Board, specifically as revised on January 9, 2019, as follows:
 - "Site Plan of Proposed Elevator, prepared for Captains Quarters at Surfside Resort, #241 Grand Avenue, Falmouth, MA", Sheet 1 of 2, prepared by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, MA, dated September 11, 2018
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 - "Elevator Addition, Innseason Resort – Captain's Quarters, 241 Grand Ave., Falmouth, MA", including sheets CS-1, A106, A107, and A108, revision dated 9 January 2019, prepared by Integrata Architecture, LLC, 419 Palmer Ave, Suite 200, Falmouth, MA.
2. One elevator shall be installed at the northwest corner of Building #1, sited between Building #1 and Building #2.
3. The maximum height of the elevator shall be 34 feet, 4 ¾ inches, aligned with the existing roof. As-Built verification regarding the height shall be submitted to the Zoning Board of Appeals and Building Department, prior to the close of the Building Permit, to insure compliance.

4. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
5. The Applicant shall comply with the Engineering referral recommendations of 10/29/18.
6. 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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.)
7. This permit shall lapse three (3) 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 Zoning Board of Appeals.

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

Vote: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Edward Van Keuren, Acting Clerk, Zoning Board of Appeals

RECEIVED
JAN 29, 2019 PM 4:08
TOWN CLERK *dh*

Date Filed With Town Clerk