



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO: #040-19

APPLICANT/OWNER: Joe Saade / Johnny Hatem, Trustee, Hatem Enterprises Nom. Trust

SUBJECT PROPERTY: 10 North Main Street, Falmouth, Massachusetts

Assessor's Map: Map 47A Section 03 Parcel 064B Lot 004

DEED/CERTIFICATE: Book 16284 page 0347

SUMMARY: Variance granted, with conditions

PROCEDURAL HISTORY

1. On June 4, 2019, the Applicant filed an application with the Zoning Board of Appeals, which was amended on June 10, 2019, requesting a Variance, pursuant to Section(s) 240-68. and 240-203 of the Code of Falmouth, to install a canopy over gasoline pumps and island, encroaching into the street setback, on subject property at 10 North Main Street, Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on August 1, 2019, at which hearing, relevant testimony was heard.
5. Appearing before the Board was Halim A. Choubah, of Choubah Engineering Group, P.C., 112 State Road, Dartmouth, MA, representing the Applicant.

6. The public hearing was closed on August 1, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Kenneth H. Foreman, Edward Van Keuren, Robert B. Dugan, and Gerald Potamis, made a decision to grant the Variance with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

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

Letters/E-mails from Abutters/Interested Parties: None

Letters/Referrals/E-mails from Town Departments

**Referrals were sent to the following Town Departments – Assessors, Building, Conservation, Engineering Health, Historical Commission, Fire Department, Planning, Board of Selectmen and Water**

- Referral from Historical Commission, dated June 10, 2019, with attached Certificate of Appropriateness from the Historical Commission, dated April 3, 2019
- Referral from the Planning Department, dated June 10, 2019 – no comment
- Referral from the Health Department, dated June 10, 2019: No issues – septic system rear of property
- Referral from Assessor's, dated June 12, 2019 – no comment
- Referral from the Water Department, dated June 11, 2019 – no comment
- Referral from Fire Department, dated June 13, 2019 – no comment
- Referral from Engineering, dated June 9, 2019 with standard comments, signed by Scott Schluter, PE

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

- Halim Choubah, PE, Applicant's representative, submitted application, authorization letter and filing fee

Plans submitted by Applicant/Applicant's Representative

- 'Proposed Site Layout' sheet 1 of 2 drawn by Choubah Engineering Group, P.C. 112 State Road (Route 6), No. Dartmouth, MA 02747 dated April 26, 2019, stamped and signed by Halim A. Choubah, PE;
- 'Proposed Canopy Layout, Elevation and Details' sheet 2 of 2 drawn by Choubah Engineering Group, P.C. 112 State Road (Route 6) No. Dartmouth, MA 02747 dated April 26, 2019, stamped and signed by Halim A. Choubah, PE; and
- 'Lighting Proposal' sheet 1 of 1 drawn by LSI 10000 Alliance Road, Cincinnati, Ohio 24 x 50 Canopy, N Main Street Falmouth, MA

Hearing:

August 1, 2019

Mr. Dugan read the Notice of Public Hearing and referrals into the record, noting that the Historical Commission issued a Certificate of Appropriateness, dated April 3, 2019.

Mr. Choubah appeared before the Board, and stated that the Premises is an existing gas station on 15,019 square feet of area, located within the Business 2 zoning and the Falmouth Village Historical District. The applicant seeks to install a 22-foot by 46-foot canopy structure, to cover the gasoline pumps. He reported that they have received the Historical Commission approval. Mr. Choubah noted that the proposed location for the canopy is the only location that it can be sited, given the existing location of the gasoline pumps, within the street setback area. He noted that the canopy provides protection for the employees as well as customers, and that it fits with the neighboring properties.

The Board inquired if there was an alternate location for the canopy, and whether one had been in place previously. Mr. Choubah replied that the canopy could not be otherwise located, as its purpose is to shelter the existing pumps. He also noted that there was not a canopy previously, and that the site has been in existence since the 1960's.

There was no public comment.

Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Potamis, and unanimously voted.

#### FINDINGS

There was no previous Zoning Board of Appeals case for the Premises.

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

The Premises is sited in the Business 2 Zoning District, and the Falmouth Village Historical District, and comprises 15,019 square feet of area, where the minimum lot size is now 40,000 square feet. The Premises has 160 feet of frontage, and the district requirement is 200 feet. The Premises is improved by a service station and gasoline pumps. The service station is sited 17 feet from the northwest, and 18 feet from the southeast side lot lines, in a district requiring a 20-foot side lot line setback. The existing lot coverage by structures is 12.8%, which shall be increased to 19.6% following the installation of the canopy. Lot coverage by structures is allowed up to 40%. The current and proposed lot coverage by structures/parking/paving is 93.8%, which exceeds the 70% maximum allowed. The Premises is presently nonconforming due to deficient lot area and street frontage, exceeding lot coverage by structures/parking/paving, the encroachment of the service station into the side lot lines, and the encroachment of the gasoline pumps into the street setback area. The canopy will be sited 7 feet from the street, in a district requiring a 35-foot setback. The height will be 21 feet, 2 inches.

In addition to the above findings, the Board finds that the proposed construction 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 use. The lot comprises 15,019 square feet, and lot coverage by structures will be 19.6%. Lot coverage by structures/parking/paving will remain at 93.8%.

B. The site is suitable for the proposed use, as the property is zoned Business 2, and has been used as a service station since the 1960's. There was no opposition expressed regarding the proposal.

C. There will be no impact on traffic flow and safety; however, the canopy shall provide shelter for the gasoline pumps.

D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the height of the proposed canopy will be 21 feet, 2 inches, which is below the 35-foot height limitation. The Historical Commission has issued a Certificate of Appropriateness for the design within the Historical district.

E. The Board of Health had no concerns.

F. The Premises is adequate for utilities and public services. Stormwater cannot be directed onto the roadway.

G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no requirement for site plan review by the Planning Board, and they issued no comment on June 10, 2019.

I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein. The canopy may be no closer than seven feet from the North Main Street lot line.

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

The Zoning Board of Appeals weighed the effects of the proposed canopy installation at the Premises, as discussed herein, and found that the beneficial effects of granting this variance outweigh any negative effects there may be. The Board found that the change, extension or alteration shall not be substantially more detrimental to the neighborhood. The Board further found the circumstance of the shape of the lot to be unique, with the siting of the structures thereon, which especially affected the subject Premises, but not affecting generally the zoning district, that a literal enforcement of the provisions would involve a substantial financial hardship to the appellant, and that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0, following a motion made by Mr. Potamis, and seconded by Mr. Van Keuren, to grant a variance, with conditions, under Section(s) 240-68. and 240-203 of the Code of Falmouth, for 10 North Main Street, Falmouth, Massachusetts (the "Premises"), to allow construction of a canopy. This variance shall be subject to the following conditions:

1. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
  - 'Proposed Site Layout' sheet 1 of 2 drawn by Choubah Engineering Group, P.C. 112 State Road (Route 6), No. Dartmouth, MA 02747 dated April 26, 2019, stamped and signed by Halim A. Choubah, PE;
  - 'Proposed Canopy Layout, Elevation and Details' sheet 2 of 2 drawn by Choubah Engineering Group, P.C. 112 State Road (Route 6) No. Dartmouth, MA 02747 dated April 26, 2019, stamped and signed by Halim A. Choubah, PE; and

- 'Lighting Proposal' sheet 1 of 1 drawn by LSI 10000 Alliance Road, Cincinnati, Ohio 24 x 50 Canopy, N Main Street Falmouth, MA

2. The canopy shall be dimensioned 22 feet by 46 feet, and be no closer than 7 feet from the street.
3. The height of the canopy shall be 21 feet, 2 inches.
4. There shall be no construction vehicles parked on the roadways.
5. 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.
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 Variance, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Zoning Board of Appeals

RECEIVED

AUG 16, 2019 PM 4:04

TOWN CLERK

Date Filed With Town Clerk