

Zoning Board of Appeals
Minutes of March 23, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Potamis, Finneran, Murphy, Duffy
Absent: Peterson

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MARCH 23, 2023 8:45 AM
TOWN OF FOX

Public Comment – none

#065-22 Nika Development, 259/263 Old Main Road, North Falmouth – requesting a Special Permit to raze the existing structures and construct two (2) duplex building and one(1) single-family dwelling on a combined parcel

Voting Members: Morse, Peterson, Murphy, Finneran, Potamis

Kevin Klauer, attorney for Applicants – We have requested a continuance to the next hearing date.

Finneran made a motion to continue application #065-22 to April 27, 2023. Murphy seconded the motion. Motion carried 5-0.

All in favor.

Application # 065-22	Applicant Name: NIKA Dev. LLC	Address: 25961/3 Old Main
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Document (s) Submitted:	Date Submitted:	Submitted By:
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Application / Fee	8/3/22	Klauer
Owner authorization	}	}
Existing photos / fire plan		
(9) copies site plan		
(9) sets arch plans		
Request referrals	8/4/22	(initials)
Request ADU HCs	8/4/22	(initials)
Preperm - planning	8/5/22	(initials)
Preperm - H2O	8/8/22	(initials)
Preperm - Health	8/15/22	(initials)
Preperm - fire	8/18/22	(initials)
Preperm - Eng.	8/30/22	(initials)
Preperm - Council	9/1/22	(initials)
letter - Malra (cop)	9/1/22	(initials)
Old Assessors Councils	9/25/22	(initials)
letter - L. Leitner	9/26/22	(initials)
letter - P. Ghent	9/27/22	(initials)
Email re: continuation	9/28/22	(initials)
Revised site plans	10/20/22	(initials)
Revised arch. plans	10/20/22	(initials)
letter - Yunis	10/24/22	(initials)
letter - Petrucci	10/25/22	(initials)

letter - Petrucci, Ghent + MacDermid	10/24/22	(initials)	1/19/23 SPA decision (initials)
continuation letter revised plans	11/2/22 11/10/23	(initials)	

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#075-22 Blue Moon Sea Grille, Inc., 159 Main Street, Falmouth – requesting a Special Permit to allow a parking reduction for the proposed restaurant

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Kevin Klauer, attorney for Applicants – I am here on behalf of Bob Ament, and we would like to request a continuance.

Morse – I will be recusing, I have a previously unknown conflict on this matter.
Finneran made a motion to continue application #075-22 to April 13, 2023. Murphy seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
075-22	Blue moon Sea Grill	159 main street
Document (s) Submitted:	Date Submitted:	Submitted By:
Copies of revised sheet (AI)	10/25/22	(Signature)
Letter from B. Ament L.	10/25/22	(Signature)
SP PB Application	10/25/22	(Signature)
Email from R. Mehta ^{w/2 photos}	10/25/22	(Signature)
Email/re: kend. J. Conrath	10/27/22	(Signature)
letter w/ comments	10/27/22	(Signature)
PB letter	11/15/22	(Signature)
letter - A. Kirk	12/1/22	(Signature)
letter - M.O.D	12/2/22	(Signature)
letter - M. O'Connell - Downey	12/5/22	(Signature)
Email - M. O'Connell Downey	12/4/22	(Signature)
filed waiver Ext.	12/8/22	(Signature)
letter - Foley	12/9/22	(Signature)
letter - Vannerson	12/9/22	(Signature)
letter - M. O'Donnell - Downey	12/12/22	(Signature)
Email - M. Ruggio	12/15/22	(Signature)
letter - M. O'Donnell	12/9/23 1/3/23	(Signature)
filed waiver Ext	1/10/23	(Signature)
letter E. Kirk	1/25/23	(Signature)
Email - R. Mehta w/ attachments	2/1/23	(Signature)
filed extension	2/3/23	(Signature)
letters w/ Attachments	4/5/23	(Signature)
letter of support - Ament	4/6/23	(Signature)
letter of support - Hilland	4/11/23	(Signature)
letter M. Downey	4/12/23	(Signature)

Application #	Applicant Name:	Address:
07522	Blue Man Sea Grill, Inc.	159 Main St.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / Fee	9/2/22	ament
owner / app. authorization	}	}
Flow Neutral approval		
Copy of PB application		
letter - Support Chamber of Comm.		
(9) copies site plan		
(9) sets ark plans.		
Request Abutters	9/7/22	AM
Request referals	9/7/22	AM
Referne - Planning	9/8/22	AM
Referne - Assessors	9/8/22	AM
Referne - H2O	9/12/22	AM
Rec'd Abutters	9/15/22	AM
Referne - ConCom	10/3/22	AM
Referne - Eng.	10/4/22	AM
email from M. Magglio ^{with attachments}	10/9/22	WS
Email w/ attachments ^{M. Magglio}	10/13/22	AM
Copy of email ^(BAMent) to M. Magglio	10/13/22	AM
Email w/ attachments	10/14/22	AM
Email from Reg. Magglio	10/14/22	AM
letter of fulfillment	10/24/22	AM
letter of support (colley)	10/25/22	AM
letter of support (Geoffrey)	10/25/22	h
(6) pages of signatures (support)	10/25/22	AM

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#105-23 Bowen, Trustees, 102 Grand Avenue, Falmouth – requesting a modification of Special Permit #110-15 and 37-21 to remove condition no.2 of the Special Permit (110-15) and increase the total lot coverage; property is under an enforcement order, by letter dated September 14, 2022

Kevin Klauer, attorney for Applicant – We are also requesting a continuance for this application.

Murphy made a motion to continue application #105-23 to April 27, 2023. Finneran seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
105-22	Bowen	102 Grand Ave.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/fee	11/30/22	Klaue
Previous sp's	11/30/22	Klaue
(9) copies sit plan	11/30/22	Klaue
Enforcement letter	11/30/22	AK
Request + Abutters	12/1/22	AK
Request reperm	12/1/22	AK
Email - S. Dault	12/1/22	AK
Permit - planning	12/2/22	AK
Cert. Abutters list	12/7/22	AK
Permit - fire	12/12/22	AK
Revised application	12/14/22	AK
Permit - Health	12/20/22	AK
Permit Eng.	12/22/22	AK
Referral CC	12/28/22	WS
Letter Support	1/17/23	AK
Letter - Support - Gernity	1/18/23	AK
filed extension waiver	1/20/23	AK
Revised plans	3/14/23	AK
Email - G. Street	3/15/23	AK
Email - Klaue ^{Continuation}	3/16/23	AK
Revised Eng. permit	3/14/23	AK
Email 8/24/22 S. Schuler	4/13/23	AK

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#009-23 Ryan, 140 Associates Road, Falmouth – requesting a Special Permit to raze and rebuild the nonconforming detached garage, exceeding 900 s/f in size

Voting Members: Morse, Murphy, Finneran, Duffy, Potamis

Murphy read the 'Notice of Public Hearing' into the record and read the following referrals:

Planning – no comment

Water - Current water service is ¾" copper. Service should be upgraded to 1"; plan does not show a water line to the new house of the detached garage. This information is needed in order to comment on the plans.

Health - Recently installed septic system accommodates this proposal – no issues with Health.

Conservation - The above referenced property is subject to a hearing under a Notice of Intent with the Falmouth Conservation Commission, which has been continued until 3/1/2023; revised email dated March 15, 2023

Engineering- drywells are shown on the plan as typically recommended; defer to the Conservation Commission, where this project falls in their jurisdiction for stormwater management and construction erosion controls.

Correspondence – none

Kevin Klauer, attorney for Applicants – The Applicants are seeking permission to raze and rebuild the nonconforming garage structure. This lot is located at the southeastern side of Chappaquoit Island, along West Falmouth Harbor. The lot is just over 62,000 s/f, located within a Residential B zoning district, and the entire lot is located within a flood zone (AE17\18). Presently, there is a 5-bedroom, single-family dwelling with a detached garage, and a footprint of just under 3,500 s/f. Lot coverage by structures is 5.5%, and the garage is nonconforming as it is an accessory structure in front yard at 32,' but otherwise conforms. The Applicants purchased the home in 2021, and is their primary residence. The proposed garage is designed to serve as both a garage, and pool house with a cabana on the first floor, and recreation space on the second floor. The proposed lot coverage by structure is 7.4% and the total lot coverage is 11.3%. The nonconformity will be improved to 43.1,' and the proposed ridge height of the garage is 22'. The game room on the 2nd floor does meet the definition of a bedroom, but will not be used as such, and the new septic system will accommodate this. I'm not sure if this falls under 240 -6.6B as it's not a 3 car garage, but it does fall under 240-10.2A. Klauer stated the property meets the criteria of 240-10.2A and 240-12.1E.

Board Discussion

Morse – Were there revised plans submitted to show the water line information?

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Klauer – No, but we can submit them as part of the building permit.

Murphy – No kitchen in the garage?

Klauer – No.

Finneran – It adds 9' to the setback, and that didn't appear to be 9'. The back corner of the property falls into the garage; it would have been nice to see something showing where that corner is.

Public Comment – none

Murphy made a motion to close the hearing. Finneran seconded the motion. Motion carried 5-0.

Murphy made a motion to grant application #009-23. Finneran seconded the motion. Motion carried 5-0.

Findings

- 1) Property located within a Residential B zoning district, West Falmouth Harbor Coastal Pond Overlay and within the AE 17 & 18 flood zones
- 2) Lot size is 62,100 s/f
- 3) Private road
- 4) Existing lot coverage is 5.5% and 9.1%; total lot coverage is 7.4% / 11.3%
- 5) Proposed ridge height is 22'
- 6) Approval from ConCom
- 7) Meets criteria of 240-10.2A and 240-12 E.
- 10) No objections in file or at hearing
- 11) Health referral– septic system is suitable for the cabana
- 12) Water comments

Conditions

- 1) Per revised plans to show water line information
- 2) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 3) Single-family use; cannot be separately rented without approval from Board

All in favor.

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#013-23 68 Sandpiper Circle Realty Trust, 68 Sandpiper Circle, East Falmouth – requesting a Special Permit to raze and rebuild the nonconforming dwelling, increasing lot coverage by structures.

Voting Members: Morse, Murphy, Finneran, Duffy, Potamis

Murphy read the 'Notice of Public Hearing' into the record, and read the following referrals:

Planning – no comment

Engineering - comments; drywells are shown on plan as typically recommended; erosion controls are shown on the plan and appear to be adequate – comply with Town's "Soil Erosion and Sediment Control Standards"; comply with section 99-1 "Affixing of legible numbers required; time limit for compliance."

Conservation – no comment

Email dated from Scott McGann, Health Agent

Correspondence – 13 letters of support

Laura Moynihan, attorney for Applicants – This property is located on Sandpiper Circle, which is within the Great Harbor neighborhood. This is a ranch style home built in 1973, on a lot of 10,000 s/f, zoned Residential B and presently has 4-bedrooms. The lots within this neighborhood are comparable in size. The existing lot coverage by structures is 23.3%, and the total lot coverage is 26.54%. This project is to raze and reconstruct the home, remove porch and deck and rebuild a 2- story home, with an attached garage and a proposed ridge height of 25.3'. The proposed lot coverage is 24.6%, and the proposed total is 30.98%. The existing gravel driveway at the front of the dwelling is proposed to be removed and replaced with a new paved driveway. A new Title V septic system will be installed, and there is no increase in bedrooms. The new proposed home will be relatively in the same location. Drywells have been added. Attorney Moynihan opined that the project meets the criteria of 240-11.4A(4) and 240-12.1E. We did submit a lot coverage analysis, and this home is within the characteristics of the neighborhood. You have 13 letters in your file in support; the owners have garnered the support of their neighbors.

Board Discussion

Finneran – It appears that the front corner of the garage is in the existing building. A stake with an offset would come in handy in these cases.

Murphy – Great plans.

Public comment – none

Potamis made a motion to close the hearing. Murphy seconded the motion. Motion carried 5-0.

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Finneran made a motion to grant application #013-23. Potamis seconded the motion. Motion carried 5-0.

Findings

- 1) Property is located in a Residential B zoning district, Great Harbors Coastal Pond Overlay District, not in a flood zone
- 2) Lot is 10,000s/f
- 3) Private road
- 4) Existing lot coverage 23.3%\26.5%; proposed lot coverage 24.60%\30.98%
- 5) Proposed height is 25'.3"
- 6) 3-bedrooms
- 7) 13 letters of support
- 8) Lot coverage worksheet submitted
- 9) Issuance of a Special Permit will cure the non-conformity
- 10) New septic system to be installed
- 11) Meets criteria of 240-10.2A, 240-11 3.A(4) and 240-12.1E

Conditions

- 1) Per plans
- 2) Basement not to be used as a bedroom
- 3) Testimony – the space on the second floor will only be used for storage space, and not habitable space
- 4) Comply with Engineering Department's referral
- 5) No additional structures without approval from the Board
- 6) Keep material and vehicles on site; if unable, contact police department for detail
- 7) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 8) Shed not to be enlarged without prior permission from the Board

All in favor.

Application #	Applicant Name:	Address:
01323	18 Sandpiper Realty	60 Sandpiper Circle
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	1/24/23	Moyhinan
owner authorization	}	}
L/c worksheet		
(9) Copies site plan		
(9) sets arch. plans		
Existing photos / drawings		
Request Abutters	1/25/23	Ⓟ
Request referrals	1/25/23	Ⓟ
Deed information	1/24/23	Ⓟ
Email to Agent	1/25/23	Ⓟ
Preperm - Planning	1/25/23	Ⓟ
Cent. Abutters list	2/9/23	Ⓟ
Preperm - Eng.	2/14/23	Ⓟ
letter - Support (Cowan)	2/17/23	Ⓟ
letter - Support (McCarty)	}	}
letter - Support (Stoler)		
letter - Support (Neste)		
letter - Support (Sherman)		
letter - Support (Curran)		
letter - Support (Bellizzi)		
letter - Support (Caulley)		
letter - Support (White)		

Application #	Applicant Name:	Address:	
Document (s) Submitted:	Date Submitted:	Submitted By:	
Letter-Support (Bath)	2/17/23	Amunihan	
Letter-Support (Hansham)	2/17/23	}	
Letter-Support (Barresi)	}		
Letter-Support (Tyer)			
Referral-Conn	2/24/23	[Signature]	
Email / Referral S. McGinn	3/14/23	[Signature]	

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Open Meeting:

- 1) Vote Minutes: February 16, 2023 and March 2, 2023
February 16, 2023 – Murphy made a motion to approve the minutes from February 16, 2023. Finneran seconded the motion. Motion carried 5-0. All in favor.
March 2, 2023 – tabled
- 2) Review Staking Policy – vote anticipated - tabled
- 3) Request for Insubstantial Change(s), modification(s) to Comprehensive Permit #063-20 et al Helms Circle LLC, 14 Kendall Lane, Falmouth – vote anticipated
Laura Moynihan, attorney for applicant – This home was approved for a 10' x10' bonus room, and a 10' x 20' patio at the rear. They are now looking to eliminate the patio and bonus room and have a 10' x 20' deck. We think that it's appropriate for an insubstantial change.
Public Comment - none
Duffy made a motion to approve as an insubstantial change. Finneran seconded the motion. Motion carried 5-0
All in favor.
- 4) Request for Insubstantial Change(s), modification(s) to Comprehensive Permit #033-21 Allen, 59 Lewis Neck Road, East Falmouth – vote anticipated
Tamara Allen, Applicant – When I purchased this house there was already a Comprehensive Permit. I'm asking for permission to put an 8' x 10' shed. I would be using the shed for bicycles, trash cans and lawn mowers.
Stockman – You had stated in your email that it was 8'x12' shed; do you know which is correct?
Allen – Whatever I put in the email is the correct size.
Karen Bissonette, Falmouth Housing Trust – Thank you for considering this, if this was not a 40B project, this would be a by right for someone to have an 8'x12' shed. In the Comprehensive Permit, we have a restriction about sheds. I'm hoping in the future that we won't have that condition.
Murphy made a motion to approve as an insubstantial change. Duffy seconded the motion. Motion carried 5-0.
All in favor.
- 5) Request for Administrative Approval for a cell tower extension at 284 Old Meeting House Road. Edward Pare, attorney for Applicant – This is a request for an Administrative Approval for a cell tower extension by 10'. All work will be contained within the existing fenced compound. This monopole was permitted back in 2014 by the Cape Cod Commission, and then this Board gave its approval in 2015. These modifications must be approved if they fit within the parameters; we satisfy each of the 6 conditions laid out by the FCC and we will comply with the Building Department's review. There was also a question raised about lighting; the tower does not have to be lit, and I did provide the FAA report as part of the application.

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Murphy – Is there a maintenance report for this tower? I'm not sure what type of maintenance report we could provide you.

Pare – We visit the site once it's constructed, but we are just adding equipment for this project.

Public comment – none

Potamis made a motion to approve the request as administrative. Murphy seconded the motion. Motion carried 5-0.

All in favor.

6) Board Discussion

7) Board Updates –

Stockman – We are in the process of working on the By-Law modifications.

8) Future Agenda Items

Finneran – I think we need to have a discussion on these split decisions; I'm not particularly comfortable with it. I think at some point we need to have a discussion. I was looking at a decision from 3 Ruth Terrace regarding the coffee business, and there was a condition that said, "shall roast coffee," and it should be "shall not roast coffee"; that really should be amended.

Meeting adjourned 7:40 PM

Respectfully submitted,

Ashley E. DeMello, Office Assistant

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