

**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

**Public Comment – none**

**Continuation #075-22 Blue Moon Sea Grill, Inc., 159 Main Street, Falmouth – requesting a Special Permit to allow a parking reduction for the proposed restaurant (SP, SM, MF, FD, GP)**

Morse – I had a previously undisclosed conflict, and will recuse myself from this application. Mr. Morse left the meeting.

Potamis – I filed a public disclosure with the Select Board that was reviewed by Town Counsel, and I have no conflict.

Duffy – With the recusal of Mr. Morse I will become a voting member. I did watch the first meeting on 10\27\22 from my home and re-watched the video and have been present for every other session regarding this matter.

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

Robert Ament – attorney for Applicants – As you know, the proposed class 1 restaurant would be a by-right use, and no Special Permit would be required if the lot coverage by structures was not being increased. The building itself is not proposed to be expanded. The lot coverage is increasing due to the addition of a handicap ramp for the outside dining area. If the area by Town Hall square were not sloped, it would be a by-right. The Planning Board has issued a favorable decision, and issued Site Plan Review approval. At the last hearing, the Board asked for information to waive the parking, and information on other downtown restaurants. We retained McMahon and Associates, who are traffic and parking experts, and studied the parking counts, and traffic in the downtown area. We visited every property down on Main Street, and studied the Assessor's records and Building Department records. The downtown parking area had been studied in depth recently in 2021, and all that information has been submitted to the Board. The Planning Board and the Chamber of Commerce's referral believe that the proposed restaurant, which will be the 18<sup>th</sup> restaurant on Main Street; it will generate little traffic for customer parking; the customers are already here. There will be a restaurant inside the existing building; the Applicant has signed a 20 year lease with the owner. The additional parking required by having the deck is described a "projecting to be negligible" by the traffic study. Blue Moon secured an arraignment to use the private staff parking lot at 65 Palmer Avenue, which is owned by the Historical Society, to park 8-9 employee cars. We will look for opportunities to reduce the employee parking where it matters. They can also use the peripheral lots that have been identified, such as the Lawrence School. Carpooling will be encouraged, and Blue Moon has offered to report to you every year, regarding their parking arraignments. Most downtown restaurants have little or no private parking, except La Civetta and Blue Fin. Blue Moon will be making the kinds of effort suggested by the traffic company. We have never suggested to have delivery trucks access the rear of the restaurant. Most restaurants will receive their deliveries from parking on street, or parking lots. Blue Moon will be no different; their deliveries will be made early in the morning. Bogosian Development LLC owns the property at 159 Main Street,

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and Timber here in Town Hall Square. That trash dumpster is emptied once a week. My office is right next to this dumpster, and I have never seen it being emptied, as it gets dumped early in the morning. It would be easy enough for them to bring their trash down to that dumpster, or behind the rear of the building. Mark Bogosian, owner of 159 Main Street, has authorized me to represent this to you. We don't think that the residential abutters can claim that they are impacted; they are arguing that the easement will be blocked. Even if there were fact based claims, such claims are outside of zoning. I have provided you with court cases; those complaints must be made to the courts, not the Zoning Board of Appeals. Town Counsel's office has advised that the ZBA not take that claim into consideration.

Duffy made a motion to allow an additional 5 minutes. Potamis seconded the motion. Motion carried 5-0.

Jason Adams, traffic expert, McMahon and Associates –We reviewed the parking in the downtown area, and projected that the demand with and without the proposed deck. We've estimated that there would be 6-8 additional parks. That review indicated that the project would not have a significant impact on the downtown area, and we feel that this would accommodate the restaurant. We have also indicated that they found additional parking for the employees.

Potamis – Did you say it was 6-8 trips per day?

Adams – It was 6-8 parks at a given time.

Duffy – We are talking about the 56 additional seats, correct? The 6-8 cars, is that per hour?

Adams – Peak time, we evaluate on a peak weekday time, and a peak weekend time.

Duffy – During the evening is a constant 6-8?

Adams – We could say during that time it's 6-8 parks, or below.

Finneran – You used the metric for high turnover or restaurants, and I'm not sure that that fits for what we have here. On page 9 of the report, the data from the ITE is for small shopping centers; and I don't consider downtown Falmouth to be a "small shopping center". I think these metrics that you use are off. On page 1 there was the claim that the employee parking agreement would offset the need for parking; that's a hard one for me.

Murphy – The date that this was done was February 21<sup>st</sup>?

Adams – That was the date of the Town's report.

Finneran – I think that your data may work in the daytime hours, but at night time, the data would be a stretch.

Adams – We are trying to look at the area as a whole. It does capture that we are looking at the whole downtown area.

Finneran – But that data isn't available. It's my feeling that we need a parking saturation study. I had come here to the Select Board's meeting one night last summer, and this project was in front of them for licensing. It took me 4 times to drive around, to find a parking space. [read the Planning Board's referral into the record]. I know that a handful of people from the Traffic Committee resigned because they felt they weren't being listened to. This is in our purview, and we are the last in line, and I struggle with it. There was a fire the other night at one of the

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restaurants, and no one could get in or out. I'm not against anyone being in business, but the unlimited parking regulations has far outlived itself.

Murphy – Was this data retrieved in the dead of winter?

Adams – No, it was in February, but they did conclude that there was enough parking in the area. About 75% of people were willing to walk about to 5 minutes, and 50% were willing to walk up to 10 minutes to their destination. Some of the people that will be on this deck won't be arriving in a car.

Murphy – When did they ask all of these people?

Adams – I'm not sure; it wasn't our study, it was done by the Falmouth Traffic Committee.

Peterson – The review is theoretical?

Morse – Yes.

Potamis – For practical purposes, are you considered a traffic expert?

Adams – Yes, I'm a professional traffic engineer. I've been at this for over 20 years.

Murphy – So you took Falmouth's traffic study and reviewed it?

Adams – Yes and did our own research, and this is the approach that we would take anytime we are giving this type of report.

**Public Comment –**

Mary Downey, abutter's attorney - There is no requirement to approve a Special Permit. This project does not rise to this level; it includes trespassing on my client's property, and in order for Cavossa to get over there, they are trespassing. There are fire and safety hazards, traffic jams and no deliveries, except from Town Hall Square. They don't talk about the way, they just talk about the deck; makes it seem like the way doesn't even exist. There is a deed that states from Hewins block to the coin shop, that there is a reservation for residents and others. There is no ability to get prescriptive rights here; there is a document on the La Civetta property that they have no prescriptive rights. This proposal will block a 100-year old way. This project is a detriment, and should not be given a permit. The Applicant wants a restaurant, without providing any parking. I hope they get their restaurant and I think that it is a wonderful idea, but I do not think that any recent proposals have gone with no parking. It's dangerous with these large trucks on Main Street. The McMahon parking analysis is a generic study, and the numbers are only for the seats on the deck; these numbers are skewed. Estia was the last major restaurant that was approved, and was able to take on the extra traffic, because they had the proper parking area to do that. You must consider if the site is adequate and suitable when you're considering a Special Permit; it degrades the site for access, service, circulation and egress. The Planning Board's decision should be given no deference. Someone has to eliminate this way, and it has not been done properly. I can see that adequacy of the site is too small for what they want to do and that's why they are expanding the footprint. The Planning Board didn't touch on that. The Building Commissioner has already weighed in that he cannot issue a permit. It has to be a shared common way, where they all work together. There was also a fireman that made mention that there should be two forms of egress.

Potamis – I believe that the Building Commissioner said he would review all relevant information, before he makes a decision. We have to look at the site plan review, it's not optional for us, and we have to incorporate any of their concerns into our permit. Do you agree that this board has no legal authority regarding the way; that's what the Town Counsel said.

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Downey – Town Counsel spoke to the question that was given to her. These Special Permits are within your discretion. I believe that it was clear that you have to go before a competent group regarding the right of way; that's outside of the ZBA's bounds. Attorney Ament asked you to look at case law, and one thing about an existing way is that you must offer an alternative way for parties to pass.

Potamis – Have you submitted your own analysis?

Finneran – Aside from the fact that we can't make any determination on the way, we can make the determination on the parking; to grant this waiver or not. There isn't an abundance of parking anymore. We have a parking problem.

Gerry Millette, 137 Main Street – I hear them talking about good faith efforts, but those aren't enforceable. He has a commitment for one vendor. I don't see how the fire and police department can approve this project. There is no parking. Mr. Ament referenced the french bakery, with no parking; but there are no servers, no tables, it's a to-go place. I submitted to the Planning Board that Mark Bogosian [owner of property] asked the Marzot's to sign away their rights and that's in writing.

Steven White, 90 Spring Lane – My family has done business in this Town. I see maybe one car parked there, Shiverick's restaurant has no parking and the seafood sushi bar has no parking. I think that is unfair to say it's because of parking. There's not enough parking in this town, and there will never be. I talked to Mr. Richardi today, and deliveries will be done at his other restaurant, and brought down there.

**Board discussion –**

Potamis – We don't bring expertise to parking or engineering, and we have to rely on what is brought to us. We have no legal authority over the easement. We should protect the Town's interest. We haven't seen any testimony that rebuts it. I think that we can approve it with some extensive conditions that should be enforceable.

Duffy – This case is about the way, and we've spent a lot of time discussing that. The ZBA has no authority to make a case about right-of-ways, and it is subject to a higher court. I will suggest, if the Board is inclined to grant this, that language be added. This is a special district, and is limited to the downtown area. Businesses are allowed to come right up to the sidewalk, no spacing between buildings, and almost all parking is provided by the Town. Almost every restaurant in the downtown area relies on public parking. The 74 seats inside requires no Special Permits; we are really focusing on the 56 seats outside. Mr. Adams said that 6-10 cars are added at a peak time. The transportation committee didn't necessarily include that more parking was needed, but that parking wasn't being managed properly. If there's not enough parking, they'll go somewhere else, I think that the parking issue will resolve itself. I would be willing to grant this.

Finneran – I completely disagree with Mr. Potamis; we were put here for our skills and judgement. Because of the number of seats, they have to come before us, and it's our duty to see if it's warranted or not. I don't think that anyone can argue that there is an issue with parking downtown. At what point is the parking saturated, that has to be considered. The traffic study used metrics that don't apply to towns at all.

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Murphy – I agree that we don't touch the right-of-way. I would have felt more comfortable if I had the lease with the Historical Society. How many employees will there actually be, because I've heard several numbers.

Ament – He said the busiest time would have up to 20 employees.

Peterson – Per shifts?

Richardi – It will change with peak times.

Ament – We have an agreement with the owner of the Historical Society; this parking lot that we are talking about is not used by the public. We have an agreement to allow 8 spaces. When the staff is not there, we can use it from 10AM – 1 hour after the restaurant closes. It can cancel in a couple of months' notice, and there is a financial component to it. We can't be sure that this will be available for the term of the 20-year lease, and we have had conversations with others that could potentially provide parking. School lots are also opened to the public, when schools are not in session. We will encourage carpooling. We will report to you on an annual basis and make a good faith effort, that is recommended by the Town Boards. I don't think that this restaurant would make any noticeable difference.

Peterson – I would like to see a robust agreement that there is parking.

Finneran – Mr. Ament just admitted that there was a problem with parking. The restaurant may be by-right, but the additional spaces are not.

Murphy – We asked Mr. Ament to do a traffic study, and he didn't.

Duffy – I think it the responsibility of the Town to come up with a solution for parking.

Ament – We have a problem, and it's a great problem to have, and I wouldn't want to do away with it. It's not fair to say that we can't have this deck. We really only need it because of the slope that is in the front area.

Potamis made a motion directing the Zoning Administrator to draft a positive decision to be reviewed at the May 4, 2023 meeting. Duffy seconded the motion. Motion carried 5-0.

Murphy made a motion to continue the hearing to May 4, which was seconded by Duffy, and unanimously voted.



Application #	Applicant Name:	Address:
075-22	Blue moon Sea Grill	159 main street
Document (s) Submitted:	Date Submitted:	Submitted By:
Copies of revised sheet (FAI)	10/25/22	(Signature)
Letter from B. Ament	10/25/22	(Signature)
SP PB Application	10/25/22	(Signature)
Email from R. Mehta <sup>w/2 photos</sup>	10/25/22	(Signature)
Email/re: kend J. Conrack	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-Dunmy	12/5/22	(Signature)
Email - M. O'Connell Dunmy	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-Dunmy	12/12/22	(Signature)
Email - M. Rago	12/15/22	(Signature)
letter - M. O. Dunmy	<del>12/9/23</del> 1/3/23	(Signature)
filed waiver Ext	1/18/23	(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 - Hill and	4/11/23	(Signature)
letter M. Downey	4/12/23	(Signature)

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07522	Blue Man Sea Grille, 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	AS
Request referals	9/7/22	AS
Referne - planning	9/8/22	AS
Referne - Assessors	9/8/22	AS
Referne - H2O	9/12/22	AS
Referne Abutters	9/15/22	AS
Referne - ConCom	10/3/22	AS
Referne - Eng.	10/4/22	AS
email from M. Magglo <sup>with attachments</sup>	10/9/22	WS
Email w/ attachments <sup>M. Magglo</sup>	10/13/22	AS
Copy of email <sup>(BAMent)</sup> to M. Magglo	10/13/22	AS
Email w/ attachments	10/14/22	AS
Email from Neg. Magglo	10/14/22	AS
letter of w/ concerns	10/24/22	AS
letter of support (colley)	10/25/22	AS
letter of support (Geoffrey)	10/25/22	AS
(6) pages of signatures (support)	10/25/22	AS



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**(Continuation)#014-23 Robinson, 594 Palmer Avenue, Falmouth** – requesting a Special Permit to convert the gift shop into an accommodation

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

Patrick Cook, attorney for Applicant – My client is seeking a change of usage, to convert an existing structure into an accommodation room. The structure itself has been there for a significant amount of time. She did work with the town, to have the structure serve as a gift shop for the bike path, but she believes that a more optimal use would be an additional accommodation space. Since the first visit, the building permit has been completed, but they are holding the permits pending this outcome. There were also a number of open permits that have been addressed. The property bounds have been staked, as well as the parking area. She is required to have 8 parking spaces but she actually has 12. There are 2 property bound issues that pre date Ms. Robinson's ownership. One of those is in court, and the other, we presume, will be shortly. She's not looking to change anything on the outside, just the use from a gift shop, to an accommodation. None of this impacts the viability of what she is trying to do. It would be optimal for her to have this complete, prior to the beginning of this busy season. The business has been long standing, and has been operating as an inn for a long time. This minor addition will not change the character of the business, or have an impact on the surrounding area.

**Board Discussion –**

Peterson – To confirm, you're required to have 8 parking spaces but you have 12?

Cook – Yes.

Peterson – There are currently 7-bedrooms and this will be the 8<sup>th</sup>?

Cook – Yes.

Peterson – What's the status of the building permits?

Cook – She has pulled permits for the work, but they are holding their permits for this approval.

Peterson – A lot of these setbacks issues I presume will be handled in court.

Cook – Yes.

Murphy – Is it still going to be a business?

Cook – Yes.

Murphy – The gift shop will be in the main house?

Jeanette Robinson, owner - We will not have a separate gift shop. We used to sell ice cream and water. During Covid it was non-existent, and I didn't want the structure to sit there.

Duffy – We have received a lot of information from the abutters, and one of them is a series of photos. It looks like the lot line that appears closest to the gift shop and from the abutters documentation says 4', is that true?

Cook – I'm not sure, but I did see that picture.

Duffy – The Zoning Board doesn't care about the lot lines or who wins in court. What I do care about is that if that is the case, and there's a 4' setback, that's a zoning violation.

Robinson – The building has been there since the 70's.

Duffy – It looks like to me that there is a zoning violation. and I'm not inclined to vote for a change of use, if there's a violation. The 10-year statute protects a structure, but it doesn't give it

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special status under zoning, and it's not entitled to any special benefits. The information that we've received suggest that it's in violation.

Cook – I don't really have anything else to say about that. I would like to be able to explore some more.

Duffy – What bothers me, is this Board acting, if something is in violation.

Morse – I don't have any issue with the change of use, or property disputes, but I will share Mr. Duffy's concern, if there is a violation.

**Public Comment –**

Jonathan Stronach, – 600 Palmer Ave., immediate abutter – [read letter into the record] regarding his concerns with lot lines, parking area, lights and lack of screening, which impacts his use and enjoyment of his property.

Duffy – You're on the north side of the property, correct?

Stronach – Yes.

Duffy – Did you say that there is litigation pending?

Stronach – We are on track for trial; there is a dispute over the boundary lines, and it was not able to be resolved with the last 2 surveys.

Duffy – Then there is a pending court case?

Stronach – Yes.

Gerald Boissineault, immediate abutter on Palmer Avenue – She had 2 title examinations done, and it's proved that she doesn't own the 25' between the properties that she has said she does, and I have surveys saying the same thing. She says that she has space for 12 spaces, but the Planning Board and Zoning Board have no records of it. Stakes have been moved, and she claims that I moved them, but why would I do that, when it benefits me? She had her lot surveyed, and I had mine done, and the stakes are almost in the same spot, except for 2 that she's saying I moved. She's pulled 31 building permits. The fire pits are supposed to be 25' from the house, and they are less than that. One of her trees came into my yard during a storm, and took down some of my cables. I'm tired of her visitors throwing the rubbish on my property. Most of the work has already been done, with no inspections, and all new walls are up.

Peter Cook – I'll have to look into the lot size, but I don't believe that it's viable. There is no work being done to increase the parking lot size. I have affidavits saying that people saw Mr. Boissineault move the stakes. We would ask for a continuation, so we can provide further information.

Gerald Boissaneault – She agreed that the property line was where they said it was, and agreed that she would remove her stuff off my property. The next day, I got an aggressive letter from her attorney, to not cut down trees, or install a fence.

Stronach – I would disagree that there has been no change to the parking area, and I have watched the construction take place.

Morse – The performance standards need to be addressed, and we will want to see a parking mitigation plan.

Duffy – It looks to me like there is a lot of unresolved issues; I think we need to know what the boundary lines are, because that will determine the size of the lots, and that may affect how many units are allowed. If there are any violations, they should file a complaint with the building department.

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Attorney Cook requested that the application be withdrawn without prejudice.

Duffy made a motion to allow application #014-23 to be withdrawn without prejudice. Finneran seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
014.23	Robinson	594 Palmer Ave
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	1/20/23	J. Robinson
(9) copies site plan		
(9) copies Ex. prop. Plans		
Septic information		
Request reemuls	1/27/23	[initials]
Request Abutter	1/27/23	[initials]
Cert. Abutters list	2/2/23	[initials]
Reemul sheets	2/14/23	[initials]
Reemul - Eng.	2/24/23	[initials]
Reemul - Con/Com	2/24/23	[initials]
Email - J. Strunack	2/27/23	[initials]
Email J. Robinson	2/27/23	[initials]
Email - M. Hickey	2/27/23	[initials]
Email - J. Robinson	2/28/23	[initials]
letter w/ attachments	2/28/23	[initials]
Complaint - Boisjournet	3/2/23	[initials]
Plan of land - Boisjournet	3/2/23	[initials]
Complaints - Hickey	3/2/23	[initials]
letter w/photos	4/10/23	[initials]
letter w/photos	4/10/23	[initials]

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**#015-23 Barnstable County Agricultural Society, Inc., 1220 Nathan S. Ellis Highway, East Falmouth** – requesting a Special Permit to allow non-agricultural events, with associated parking, and parking for a fee

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

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

Health – no comment

Assessors – no comment as presented

Engineering – no comment

Fire – The Fire Department has no issues

ConCom – no comment

**Correspondence** - none

Wendy Brown, manager – I’m applying for our annual permit for events and paid parking for the Barnstable County Fair. I meet with all of the other departments throughout the year.

**Board Discussion**

Duffy – Have there been any significant changes since the last permit was issued?

Brown – No, all of the events are the same, except for one camping event, but that won’t cause any traffic issues.

**Public Comment** – none

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

Peterson made a motion to approve application #015-23. Finneran seconded the motion. Motion carried 5-0.

**Findings / Conditions**

Incorporate last year’s decision into this permit

All in favor.

Application # 015123	Applicant Name: BCAD, Inc.	Address: 1220 Nathan S. Ellis.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / Fee	2/8/23	W. Brown
Parcel IDs	}	}
List of '23 events		
(9) copies plot plan		
maps of parking		
Request ADUTs		
Request Referrals		W
Email to agent	2/8/23	W
Copy of Solar plan	2/9/23	W
Referral - Health	2/14/23	W
Referral - Assessor	2/14/23	W
Referral - Engineering	2/24/23	W
Referral - CalCom	3/15/23	W

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**#019-23 Guidi, 81 Red Brook Road, East Falmouth** – requesting a Special Permit to construct a detached garage with an accessory apartment, above in the front yard, more than 50’ from the front property line

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

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

Planning – Applicant came before the Planning Board, and received a Site Plan Review decision (attached)

Health - Main house has a 4-bedroom septic system serving a 4-bedroom house. The accessory apartment will be the 5<sup>th</sup> bedroom, so the existing septic is not suitably sized. Applicant shows an additional septic tank being proposed, but the wastewater will feed to the undersized leach pit. I/A technology would not be required as there is enough lot space, so not to be triggered by the accessory apartment bylaw’s 1 bedroom per 10,000 sq. ft. I/A requirement; received revised email.

Assessors – Assessors request site visit to final sign off

Engineering - standard comments; drywells are proposed as recommended; if approved the accessory apartment would be assigned the address of 81 Red Brook Road Apt A; comply with section 99-1 Affixing of legible numbers required; time limit for compliance; comply with Town’s “Soil Erosion and Sediment Control Standards”

Fire – no comment

Concom – no comment

**Correspondence** – none

Gary Guidi, applicant/owner – The proposed garage is about 72’ from the street, and 12.5’ from the side. It has to be located in the front yard, because the back is a protected area. I have spoken to my neighbors on both side of my property, and they don’t seem to have an issue with it. I’m proposing a 2-car garage, with an auxiliary apartment, with a set of interior stairs, small porch area on the front, and a small deck at the rear, with a set of stairs coming down on the back side. It’s about 610 s/f, one bedroom, living room with one bathroom. The first floor will be a 2-car garage for storing my antique cars.

**Board Discussion** –

Peterson – The garage and accessory dwelling will be a total of 1,200 s/f, correct?

Guidi – Yes.

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Peterson – Will the septic system remain for 4-bedrooms?

Guidi – I would like to speak to the Health Department, because I may put in a separate septic system. It would actually be cheaper for me to do that, than tying into the existing system.

Peterson – What are the 2 means of egress?

Guidi – Stairs down the back, and then off of the deck.

Finneran – Are you going to rent the apartment out?

Guidi – Yes, I have a friend that will be renting it.

**Public Comment** – none

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

Peterson made a motion to grant application #019-23. Murphy seconded the motion. Motion carried 5-0.

**Findings**

- 1) Property is located in a Residential A zoning district, Waquoit Bay Coastal Pond Overlay and AE11 flood zone
- 2) Existing house is approximately 1,800s/f; proposed garage is 631s/f
- 3) Lot size - 74,750 s/f
- 4) Public Road
- 5) Existing lot coverage 3.2% \ 9.39%; proposed lot coverage 4.4% \ 12.29%
- 6) Testimony that Applicant intends to put in a separate septic system
- 7) Garage located in front yard due to topography and wetlands at the rear
- 8) Proposed ridge height 21' .6"
- 7) Meets criteria of 240-6.6b, 240-11.4A(1)(i) and 240-12.1E
- 8) Received Planning Board approval

**Conditions**

- 1) Per plans
- 2) Administrative approval for second set of stairs and septic system
- 3) Comply with Engineering Department's referral
- 4) Comply with the Planning Board's referral



**Zoning Board of Appeals  
Minutes of April 13, 2023 at 6:30PM  
Zoning Administrator: Noreen Stockman  
Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

5) Construction Hours: Monday – Friday 7A-7P, Saturday’s 8A-4P; no Sunday’s or Holidays absent an emergency

All in favor.



**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

**#021-23 Vikinn, Inc., 75 Locust Street, Falmouth** – requesting a Special Permit to convert the bed and breakfast into a duplex

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

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

Planning – no comment

Engineering - with standard comments; if approved the following addressed would be assigned, 75 Locust Street Apt A/75 Locust Street Apt B; comply with section 99-1

Fire – the Fire Department has no issues with this project

ConCom – no comment

Email dated March 28, 2023 from Scott McGann, Health Agent

**Correspondence** – no comment

Kevin Klauer, attorney for Applicant – The Applicants are seeking permission to modify existing special permits #2913 and #146-93. The structure was built in 1881, and was the Captain Lawrence Inn. The property is an abutter to Wood Lumber and 7-11 convenience store. The lot is 21,288 s/f, located in a split zone, with the front being General Residence, and the rear portion being Light Industrial A. Presently, there is a 7-bedroom B&B, and a one-bedroom apartment, above the garage. The combined footprint is 3,780 s/f, with lot coverage by structures at 17.8%. The only nonconformity is the southeast setback being 7’ .2,” but otherwise conforms. This was previously a carpet shop. The first permit allowed the upstairs as a B&B, and the ‘93 permit acknowledged the entirety of the main building to be allowed for a B&B with the garage being living quarters for the inn keeper. Since Covid, the B&B model has proved to not be viable, so they would like to convert this into a duplex, being the 1-bedroom above the garage, and the 7-bedroom main house. Attorney Klauer stated the project meets the criteria of 240-10.2A and 240-12.1E. Duplexes are allowed in a General Residence district, and multi- family is allowed in the Light Industrial District. The only change would be the removal of the B&B, and the condition of the rental of the apartment above the garage.

**Board Discussion** –

Duffy – There’s a total of 3-units?

Klauer –Two units; the main house, and the apartment above the garage. Under the multi-family use they could seek up to 3 units.

Finneran – What is the intended use?

Klauer – The applicant may rent one, and use the other for their own use, but they don’t want to be in the B&B business anymore.

**Zoning Board of Appeals**  
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**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

Finneran – Would it be an Air B&B?

Klauer – It could be.

**Public Comment –**

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

Peterson made a motion to grant application # 021-23. Murphy seconded the motion. Motion carried 5-0.

**Findings**

- 1) Property is a split zone lot, General Residence and Light Industrial A; within the Historic Overlay
- 2) Lot size is 21,288 sf
- 3) Lot coverage is 17.8% \ 29.4%; no change
- 4) Public road
- 5) Meets the criteria of 240-10.2A and 240-12.1E
- 6) Not noxious to industrial uses in area
- 7) Testimony - decreases use in the neighborhood

**Conditions**

- 1) Comply with Engineering Departments referral
- 2) Approval, if needed, by the Historical Commission for any exterior changes
- 3) Register for short term rentals

All in favor.

Application #	Applicant Name:	Address:
001-23	Viking, Inc.	75 Locust St.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/fee	4/13/23	A. Lamm
Owner authorization	}	}
previous decisions		
(9) copies site plan		
(9) sets arch plan		
Request Abutters		
Request referrals		<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Referral - Planning	2/14/23	<input checked="" type="checkbox"/>
Cert. Abutters list	2/22/23	<input checked="" type="checkbox"/>
Referral - Engineering	2/24/23	<input checked="" type="checkbox"/>
Referral - Fire Dept	3/13/23	<input checked="" type="checkbox"/>
Referral - Con Com	3/15/23	<input checked="" type="checkbox"/>
Referral - Health	3/28/23	<input checked="" type="checkbox"/>
Email - M. Reghillo	4/7/23	<input checked="" type="checkbox"/>

**Zoning Board of Appeals  
Minutes of April 13, 2023 at 6:30PM  
Zoning Administrator: Norcen Stockman  
Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

**#024-23 Bateman, Trustee 14 Clam Lane, E. Falmouth** – requesting a Special Permit to allow a pool and rinse station, exceeding 20% lot coverage by structures

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

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

Planning – no comment

Engineering – standard comments

ConCom – no comment

**Correspondence** – none

Shannon Sylvester, Clancy Construction, representative – We are requesting a lot coverage increase from 20%-22.65%. We are adding a pool, with a stamped patio. There will be a rinse station attached to the deck. It's a plunge pool, so it's not very deep. The shower will be made out of PVC, and a PVC fence will surround the pool, to help with any noise. The gates will also be compliant with the building code.

**Board Discussion** -

None

**Public Comment** –

Henry Peters, no address provided – I have a proposed house at the rear of this property. I think that this is excessive, with the pool and lighting. A 6' fence isn't going to make it. Will they put in any type of plantings that will grow quickly? I'm worried about stormwater runoff. This pool seems to be after the fact; they're building a new house. It seems like a lot for this small lot, and is he setting a precedent here. Are the 4 other lots going to want a pool? The proposed pool is 30'x12'. I'm the closest abutter. I would like to be present, if there is any pruning be done on the trees.

Duffy – I appreciate you bringing this to our attention, because we can put some of these in the conditions. There was a plan that was approved recently, and part of the decision was that the developer would provide the abutter(s) with an allowance for plantings.

Regina Peters Johnson, 9 Crowell Road, - I had construction vehicles driving into my property, and this has been an ongoing issue. I am opposed to this pool. I think that this is an excessive ask; I don't like the infringement or encroachment on the property lines. I did put up caution tape and no trespassing signs to keep them off my property. I've tried to work with the construction company, but I think that it has become an excessive use.

**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

Finneran – According to the plans, they have 10’2” from the property lines, and they should be able to get any truck back there. You’ve put up a fence?

R. Peters – There’s 2 saw horses and caution tape; this activity has increased in the last month. There have been verbal commitments that have not been met on his part.

H. Peters - Crushed stone would be helpful and trees planted along the property line.

Finneran –We could have a condition that the lights be no higher than the fence, and that they have covers, so that all of the lighting does down. They also can’t shed stormwater off their property; that would have to be managed. Is your elevation similar this property’s?

Peters – It is similar. Also, this pool will be bordered by a hardscape; I don’t know if that’s part of the structure of not.

Stockman – If the patio around the pool is on grade it would go to the total lot coverage.

Duffy – The shed for the pool equipment doesn’t show setbacks.

Stockman – It’s not a shed, it’s a concrete pad for that the equipment would sit upon.

Duffy – I don’t know if I like the idea of that; it seems it would be noisy.

Peterson – Is there a spot on the lot that that would be a more acceptable location?

H.Peters – I don’t know if he could position it in a different way, over towards the back corner of the garage. I also wonder about the deck and the screened porch that are on the plans. He is building like they have already been approved; so was this an afterthought, to squeeze in the pool?

Sylvster – They were on the initial plans.

H.Peters – How would you verify that?

Sylvester – The building department has those plans.

H.Peters – The deck and the sunroom were previously included.

Sylvester – Yes.

H.Peters – You knew from the start that this would exceed the lot coverage.

Sylvester – After discussion and starting to build, the homeowner decided that she wanted to put a pool in. We did try to find the best suitable spot for the pool and this was the only location that worked.

Potamis – The pool patio should be moved.

Finneran -Some trees would be nice; a landscape plan would be helpful.

**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
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Morse –I think we should have a determination from Building Commissioner regarding the stamped patio.

Duffy – I would like to have the pool equipment enclosed.

Murphy made a motion to continue to May 11, 2023. Peterson seconded the motion. Motion carried 5-0.

All in favor.





**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
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**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

**Open Meeting:**

- 1) Vote Minutes: March 2, 2023 and March 23, 2023

Finneran made a motion to approve minutes of March 2, 2023 and March 23, 2023.  
Peterson seconded the motion. Motion carried 6-0.  
All in favor.

- 2) Review Staking Policy – vote anticipated – tabled

Finneran – At the last hearing, I had asked to have offset stakes put in if the proposed structures is within the existing structures. We have also have cases where there is split zoning, and I think it would help us if those district lines were identified by stakes.

- 3) Reconsideration, #110-22, Keller, 72 Pheasant Lane, East Falmouth – request to allow a spa/pool

Morse – We had denied this request previously, and have since received a letter from Attorney Ament, requesting a reconsideration. [read the Board’s procedural rule for reconsideration into the record]

Morse – This is a discretionary grant and the Board denied it. Is there a belief that based on the standards that there was a serious defect?

Duffy – I don’t think that you have to have a notice defect. If you build a building, and the Building Commissioner finds out you built that without a permit, you get charged double, but he wouldn’t make you take it down. If this project had come to the Board before the pool was installed, it could have been approved. I would be inclined to reconsider.

Morse – I don’t have a problem with reconsideration, to make sure that if, in fact, it’s a denial that it would be legally viable.

Duffy made a motion to allow a reconsideration. Morse seconded the motion. Motion did not carry with members Murphy, Peterson, Finneran in opposition. Vote 2-3.

- 4) Board Administrative Approval #010-23 O’Brien, 68 Woodside Drive, East Falmouth – permission to place a roof over the existing raised front porch

Klauer – The Applicants installed a raised patio and now would like to extend the raised roof over the patio; there will be no habitable space and the porch will be open. They are maintaining the existing setback.

Morse – Are there issues with runoff?

Klauer – No, the lot is very flat.

Finneran made a motion to approve application #010-23. Murphy seconded the motion. Motion carried 5-0.

All in favor.

**Zoning Board of Appeals**  
**Minutes of April 13, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy**

- 5) Board Discussion - none
- 6) Board Updates - none
- 7) Future Agenda Items – April 27, 2023 6:30PM

Respectfully submitted,

Ashley E. DeMello, Office Assistant

Board of Appeals