

**Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:**

RECEIVED
DEC 5, 2023 AM 10:32
TOWN CLERK

(continuation) #070-23 Clark, Trustee, 711 West Falmouth Highway, West Falmouth – requesting a modification of Special Permit #1737 to convert the existing 3-family into a duplex, and construct a new duplex structure

Voting Members: Morse, Murphy, Finneran, Duffy, Potamis
Letter read into the record from C. Moniz and T. Bowman

Kevin Klauer, attorney for Applicant – This property is 41,734s/f and it is split zoned; B3 and Residential B family. Currently, there is a 3-family dwelling near the street, which includes a 2-bedroom apartment, a 1-bedroom apartment and a studio. There is a single-family dwelling at the rear of the property which contains 2-bedrooms. The front house is nonconforming as it is only 23' from the front property line, but otherwise conforms. There is an existing 1963 Special Permit which allowed the division of the front structure into 3 units. We are requesting a Special Permit for the construction of a new duplex located entirely in the B3 zone. One of the existing units in the front building will be eliminated, resulting in a total of 5 units on the property. This has been reviewed and approved by the Historical Commission and a Certificate of Appropriateness has been issued. The new duplex is proposed to be in entirely within the B3 district with 2 x 2-bedroom apartments. There will be a total of 9 bedrooms on the property, and a new, 10-bedroom Title 5 wastewater system was installed last year. The new duplex as proposed does not create any new nonconformities, and complies with setbacks and lot coverage requirements.

I believe that the Board was requesting an opinion from Town Counsel regarding the use of split zone lots. There have been many projects approved like this within the immediate area. These buildings have been in existence for over 100 years with a use allowed by a special permit. The proposed duplex is entirely within the zone which allows for that use, and it's appropriate to calculate the density based on the entirety of the parcel. Attorney Klauer stated the project meets the criteria of 240-10.2A and 240-6.2B.

Board Discussion –

Duffy – Mr. Klauer asked if we've received Town Counsel's opinion.

Morse – We have, and Town Counsel is not agreeing with your opinion on this lot.

Klauer – I don't know how you read it any other way. I'm not sure why Town Counsel is taking that position, I haven't had the chance to speak with them, but the case law is clear that you're allowed to count the entire lot in determining density.

Finneran – Can you review the nonconformities?

Klauer - The front yard setback is 23' and there is a multi-family with 3 units in more than one building and the structure in the rear straddles the zoning line.

Finneran – Has this always been one lot?

Klauer – As far as I am aware, yes.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Finneran – You refer to one of the buildings in 3 different manners. The plans say accessory building, single family cottage and now you saying it's a part of a multi-family situation. When was the building in the back built?

Klauer – The 1960 photo shows the 3-family and the single-family, and not as well, but you can see it in the 1950's aerial. The Assessors do indicate it's been in existence since the 1900's.

Finneran – I looked at these photos today, and I don't think it's readily discernable. When was it converted to the dwelling?

Klauer – The 1963 Special Permit allowed for the 3-family structure in the front. There's really no records on the back structure; I haven't looked at the Assessors' cards, but we can request that. As far as we know it's always been used as a dwelling.

Finneran – I looked over the Assessor's cards, and didn't find any information as to the use, and I couldn't find any evidence that it was converted into a dwelling. You seem to be confusing the density and dimensional requirements; this is different from Tofias v. Butler.

Klauer – I couldn't take credit for the square footage in the front and back. It's a preexisting non-conforming structure and use. You can't take double credit for it.

Finneran – It appears to be a nonconforming, non-complying structure because you have no evidence that there was ever a permit granted to make it a dwelling.

Klauer – It predates us; this building has been in existence for close to 100 years, there's not going to be any records of Certificates of Occupancy's being issued 100 years ago.

Finneran – There is no mention of any dwelling in the back in the special permit, it only mentions the conversion of the front structure from a single family to a 3-family.

Klauer – The Special Permit was being issued under the conversion Bylaw for that particular structure, which allows for a structure to be divided into up to 4 units. It wasn't a Special Permit related to the entire property; it was relative to that structure.

Finneran – This differs from the examples that you've presented. The residential portion of the lot is already used up by a residence; I don't see how you can get a second bite at the apple.

Klauer – Because it's part of a multi-family scheme.

Finneran – What's the square footage in the Business zone?

Klauer – 14,976s/f.

Morse – Do you know when the particular zoning districts were enacted?

Klauer – Not specifically, zoning came into effect in 1929.

Murphy – When we first opened the hearing, many abutters complained about the upkeep of the property. What are you providing for storage?

Klauer – There's a basement in the proposed duplex and in the 3 family, and a basement in the cottage. We would be more than happy to provide additional sheds if needed for storage, we have more than enough available lot coverage.

Murphy – It's a mess; it's gotten cleaned up, but it was a mess before you applied.

Petrucci – I think they have done a good job cleaning it up. After reading Town Counsel's opinion, this project may not happen. You don't have an acre there. I think that you have to consider that you don't have an acre.

Klauer – You don't need an acre, it's up to 6 units per acre. There has never been a requirement that you must have an acre to do this and that's not what the Bylaw says.

Petrucci – I don't see how you can get any more units on this lot.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Klauer – Would the Board be willing to release Town Counsel’s opinion?

Morse– My concern is the total lot size; you have significant opposition and there are real concerns with density and that is in keeping with Town Counsel’s opinion. Based on testimony and pushback I think there is too much here.

Public Comment –

Alison Jessup, 701 West Falmouth Highway – I adamantly oppose this project. I did write a letter to the Board. Do we actually know the square footage of the duplex? Attorney Klauer mentioned 9 bedrooms, and I have counted 10 bedrooms. The number of units and bedrooms is confusing to me; I am curious as to how many bedrooms there are. I am in opposition.

Curt Jessup, 701 West Falmouth – We appreciate your due diligence as to what can be done. I would hate to do something because of what was done in the past. I would ask you to consider this. It’s less than an acre, how can you do it?

Finneran – This Board has no precedence, but we admit that we have made mistakes and we try to look at every case uniquely.

Brian Tolche, direct abutter, no address provided – I’m opposed to having something further down the line happen. If this does go forward with 5 units, I would like to see restrictions be set in place. I would like to see no more than 5 units, and no more than 10 parking spaces. I would also like to see that the fence and evergreen trees be maintained in perpetuity.

Tammy Bowman, 708 West Falmouth Highway – With more sheds possibly going up, this will look like a circus with the existing house, new duplex and now more sheds. I would like to know exactly what he [Klauer] was talking about the existing basement, because I believe that the front house has a crawl space. I do oppose the whole situation and hopefully it won’t go forward.

Cheryl Moniz, 708 West Falmouth Highway – I don’t think this has anything to do with the pre-existing, nonconforming issue, these buildings are upfront and personal. This building is not setback, and is on a hill. There is no way that it won’t impact the neighborhood. The building in back, there is no record because it was a chicken coop, and then all of a sudden it became a house.

Finneran – Is there anyone that can share its history with photos?

Moniz – We can produce those.

Finneran – Such information would help us if you have any history.

Duffy – I don’t see any reason to maintain Town Counsel’s opinion. Duffy made a motion to release Town Counsel’s opinion. Murphy seconded the motion. Motion carried 4-1 with member Finneran abstaining.

Finneran – I disagree, it should be his [Town Counsel’s] decision if it gets released or not.

Potamis – I think in this case we should release the opinion.

Morse made a motion to continue application #070-23 to December 14, 2023. Murphy seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
170.23	Clark Trustee	711 West Pal Hwy
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/See	7/21/23	Kluun
owner authorization))
SP #1737		
Aerial photos		
Cert. of Appropriateness		
(9) copies site plans		
(9) sets ana. plans		
Request abutten	7/25/23	Ⓚ
Request referne	7/25/23	Ⓚ
Cert. Abutten list	7/27/23	Ⓚ
Determination of App	7/28/23	Ⓚ
Refenel - Eng.	8/14/23	Ⓚ
Refenel - ConCom	8/23/23	Ⓚ
Refenel - Plat L	8/25/23	Ⓚ
Refenel - ConCom	8/25/23	Ⓚ
letter - Tulchok	9/10/23	Ⓚ
letter w/ pictures - Jessup	9/12/23	Ⓚ
letter w/ photos - Tulchok	9/12/23	Ⓚ
letter opp. Fitzpatrick	9/13/23	Ⓚ
Email J. Fox email	9/13/23	Ⓚ
Disclosure Duffy	9/13/23	Ⓚ
letter opposition - Adesip	9/14/23	Ⓚ
letter opposition - A. Connolly		

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

#082-23 Galasso, 545 Main Street, Falmouth – requesting a Special Permit to redevelop the building for dwelling units, commercial accommodations, and restaurant; and appealing the Building Commissioner’s determination.

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

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

Planning - See attached Site Plan Review and Special Permit decisions and approved plans.

Engineering - reviews for Site Plan Review for the Planning Board attached

Conservation -Conservation staff have no comments on the above referenced project as it appears to be located outside of ConCom jurisdiction

Correspondence – 8 letters of support

Robert Ament, attorney for Applicant – I represent the Applicant 545 LLC, and the principle is Michael Galasso, who has experience creating affordable / workforce housing. Falmouth has a housing crisis, and this project is a good effort to address the problem. This would be a conversion of an existing building that was a former nursing home with 121 beds. This project will be partly affordable housing and partly commercial accommodations, which would be for short term rentals and transient traffic. I think that you will agree that it is a wonderful project. The project has been approved by the Falmouth Planning Board under the Mixed Residential Commercial Overlay District [MRCOD] Bylaw and it was passed expressly for encouraging affordable housing in appropriate locations, such as the downtown area. The mixed use development is an as-of-right use, and may proceed without the use of a Special Permit or zoning approval. Mixed use development is a development that contains a residential and non-residential use without limitation etc. This is an existing building which has been vacant for about 3 years. The Bylaw states that the Planning Board shall be the sole permit granting authority of MRCOD. Attorney Ament reviewed definitions with the Board. The MRCOD was adopted by Town Meeting to say “without limitation”, and they removed the word “permitted”. The Building Commissioner made a determination that commercial accommodations are not listed in the Bylaw as-of-right or under the mixed-use definition; there are many uses that aren’t mentioned in the Bylaw. You don’t need to get a Special Permit for a proposed project that is within the MRCOD district. We have a nonconforming building which wouldn’t be allowed to be built, but MRCOD specifically says that the Planning Board is given the authority to allow changes to a nonconforming structure. That is the language that you would apply if you were given a Special Permit. The Planning Board has this authority now to streamline affordable housing. You may need other permits and those are the local permits which are referenced in the Bylaw; not another zoning permit. I think it’s very clear that a Special Permit is not required and that the Planning Board is the sole permit granting authority for MRCOD.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Board Discussion

Petrucci – If we decided you need a Special Permit under what section you would be applying for?

Ament – We’ve submitted both a Special Permit application and an appeal. We appealed after we filed for the Special Permit because the Building Commissioner hadn’t issued his determination at that point; and the two cases were combined. If you decide we need a Special Permit; we’ve applied for it under commercial accommodations.

Peterson – It specifically states local and state permitting are still in place.

Ament – If we only wanted Commercial Accommodations, and we weren’t creating affordable housing, the underlying zoning remains in effect. It’s only a MRCOD if you are providing affordable housing; it can be a combination use.

Peterson – Commercial Accommodations require a special permit, don’t they?

Ament – Correct. If you’re proposing a restaurant or commercial accommodations with affordable housing, that meets the definition of mixed use and that’s what the Planning Board has agreed with.

Peterson – Did you read the Town Meeting minutes of MRCOD, and did they specifically speak about Commercial Accommodations?

Ament - The words “Commercial Accommodations” are not mentioned anywhere in the Town Meeting minutes, but they fit in with the mixed-use definition; but those specifics never came up, just like they aren’t mentioned in the Bylaw. There was a representative of the Board of Appeals that went to Town Meeting, and recommended against MRCOD because they felt they [ZBA] should have additional procedural requirements and rights of appeals. The Bylaw is very clear that the Planning Board will be the permit granting authority. Ament read Town Meeting minutes into the record regarding MRCOD Bylaw. Town Meeting passed the Bylaw and I’ve shown you the language; it’s the language of the Zoning Bylaw and it couldn’t be clearer. I’m not asking if you think this is a good Bylaw or not, and we know that the ZBA opposed this, but it was up to Town Meeting, and they passed this.

Peterson – In the Planning Board’s decision it says that if the Building Commissioner agrees a Special Permit is needed, I would think that you need to come to us.

Ament – That language about leaving it up to the Building Commissioner is right, it is up to him. The Planning Board agrees unanimously that a special permit is not required.

Peterson – I’d love to see this project move forward; its complex, but I’m not sure about the two bunk rooms or 21 single rooms without bathrooms. I would think that you would need to come in front of us for a Special Permit.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Murphy – When I looked at the plans, there are two lots; do you have anything showing that they were combined?

Ament – The building has been there since the 60's, and probably more than 50 years ago the lots were assembled and possibly purchased from 2 different sources. We could record the deed that would show them as one.

Murphy – You've alluded that this will contribute to affordable housing which will help with the affordable inventory, will you be applying to MA Housing?

Ament – Yes, one of the requirements of the MRCOD Bylaw is that the housing must be permanently restricted for affordable housing that is at least 25% of the units. The Executive Office of Housing and Livable Communities, which used to be the Department of Housing and Community Development would approve that.

Murphy – How are you dealing with rooms with no bathrooms?

Ament – I'll let Mr. Galasso make his presentation and explain that.

Finneran – I agree with the Building Commissioner; it doesn't say anywhere that this Bylaw supersedes a Special Permit. MRCOD was not intended for Commercial Accommodations.

Duffy – I have read the material and relevant Bylaws. I think that if you look at 240-7.B you see the MRCOD language, and it's allowed by right and gives the authority to the Planning Board. I think many things, including Commercial Accommodations, are included. The letter from Mr. Street is appealable. I think that Mr. Ament has made a convincing argument.

Potamis – I agree with Mr. Duffy and I was on the Board at that time during this discussion. Do we need to vote on the appeal first?

Stockman – I was asked by the Building Commissioner to request a continuance from the Board.

Finneran - I don't believe that an abutters rights should be taken away from appealing. We are their last line of defense. I don't see where it says what Mr. Ament purports.

Ament – If a non-town official came to the scheduled meeting, I would question whether you would be sympathetic to that; this has been going on since June. This matter is worthy of your consideration and we can agree to a continuance. I think that the question is whether we need a special permit. We want to get this project approved and start creating affordable housing.

Morse made a motion to continue the appeal to December 14, 2023. Peterson seconded the motion. Motion carried 5-0.

All in favor.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Michael Galasso, manager – I have developed units like what we are proposing for this nursing home. The property was bought by John Hellman, who was an architect in Town in the 1950's. The old Commercial Accommodations were torn down in 1967 for the nursing home to be built. It's a midcentury modern building and designed by Mr. Hellman. The back portion of the building was added in 1971, and they had a total of 121 beds. The building was built by Sullivan and Foster and has some historic significance, and that has determined what we can do to the interior and exterior. We aren't sure if we can change the round part in the interior unit so until that is determined, right now we aren't sure if we can have individual bathrooms in those rooms. Right now there are 71 parking spots, which is how we came up with 71 units for the building. Due to the requirements from the Fire Department to have a 16' wide lane that goes all the way around the building, and the new parking requirements we've lost some of the parking spots, which has brought us down to 59 spots. Our parking study showed that only 50 spots were actually necessary for this project. A lot of people think that people that live in affordable housing projects have multiple cars, and that's not the case. One of the amenities that we want to provide is a Civic Plaza that will be located in the front of the building. This will be a place where people can stop for something from the café, and there will be art on display that will periodically change. We will also be providing 16 bike lockers that will provide storage for 32 bikes. We've taken a lot of our government officials in here and they support the project. We haven't been able to house many J1 student here because we don't have the housing for them; we've lost a lot of housing over the years. This is an attempt to add some of that housing back. If you talk to some of the J1 students they will tell you that they live 7 or 8 people to a room with one bathroom. I met with the former Police Chief and this project would be great. When the Police Station recruits a new police officer they need a place to stay while they make the decision on whether or not they want to stay here. There is a commercial kitchen and private bathrooms on this level. There will be a fitness center, and laundry facility. There will be 2 designated rooms on the basement for "bunks rooms". On the first floor there will be a café facing Main Street. There are fire exits, but you can only go in and out one way. There are security doors with fingerprint access. We manage all of our projects; we don't hire a third company manager. There will be a full staff, about 8-12 full time employees. There will be a kitchenette in each room, and a communal kitchen towards the back, which will be open 24 hours a day. There will be vending machines with fresh salads and sandwiches, and behind that area is a co-working space. All rooms will be fully furnished; everything will be there. All the existing mechanicals that are fueled by natural gas will be replaced with electric, and solar panels will be installed on the roof. This project is located on the bus line, and we work with a company who will rent cars to us. In turn the residences can rent the cars by the minute. We will also have a shuttle bus, and there will be no charge to the residents. By going with MRCOD, I think that we came up with a very creative way in order to permit affordable housing, and I think what we are proposing fits very well into our comprehensive plan. It has been very difficult to permit this project because we just don't have the Bylaws for something like this.

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Board Discussion

Finneran – I question the need for the commercial accommodations; where will those be?

Galasso – They'll be spread throughout the building. There is a certain number under MRCOD and the commercial accommodations gives us the rest of the units.

Ament – The MRCOD Bylaw is the avenue to do this project; it doesn't work as only Commercial accommodations, you can't finance that as affordable housing. This project shows 26 units that will be designated as housing. In order to qualify, the units have to be rented for one year. These are people's dwellings, and residents of the Town. That is the max we can have, 20 units per acre, and the project cannot be done unless we have a use for the entire building. There are 71 units; 26 residential, and rented for no less than 1 year. The other 45 units are the smaller ones, and those will be permitted as Commercial Accommodations. Commercial Accommodations refer to a boarding house, and can be rented for 30 day periods and are suitable for short term occupants. They will not be able to be rented for less than 30 days, it will be on a month to month basis. We have restaurants that can't open because they don't have the staff where there is no housing for them. Twenty-five % of these units will be affordable, and the financing may allow more units to be put on the SHI list; it works under the Bylaw. The Planning Board has agreed to this project.

Peterson made a motion to go to 10:15PM. Finneran seconded the motion. Motion carried 5-0. All in favor.

Peterson – It's an interesting product. My only hope is that we are following the Bylaws.

Petrucci – Have you spoken with MA Housing?

Galasso – A 40B is only under MA Housing, this is not a 40B. I need money from the state so I am in contact with them.

Petrucci – I'd like to know why this can't be done.

Galasso – They don't like the smaller units because some don't have kitchens or bathrooms; it's a guidelines issue. They like the project, and what we are trying to do.

Petrucci – It seems it may be a building code issue.

Morse- It's a great project, are you going to obtain a license as a rooming house?

Ament – There will be people who will be there as a yearlong lease or people that are there for a few months. It's not going to be like a motel.

Duffy – It appears that there are a lot of moving parts, if this Board grants you an approval how close are you to starting it?

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Galasso – It will take us a good part of next year to get funding, and then renovating will take about 1 year.

Finneran – What will the average rents be?

Galasso – Some of the units will be \$1,500.00, 1-bedroom market rentals will be \$2,500.00, and there will be units that will be lower than that. We can go a little higher because utilities are included.

Finneran – I don't dispute the great need for this, but the major concern I have with this is parking. I'm also concerned with overflow with the surrounding streets and businesses; we have an unaddressed need for parking in this town.

Ament – We did submit a traffic study; this will be not produce more than what the nursing home generated for traffic, or a large restaurant. The professionals don't think there will be a traffic problem and the benefits of this project outweigh anything negative.

Public Comment

Maureen McGowan, 536 Main Street, Pond View Condos – I have a condo across the street at Pond View, and I rent my condo out. We have hired Attorney Edward Kirk, but he wasn't able to be here tonight. We have gone through the meetings with the Planning Board and their process. I have always rented my unit below market rate. We also keep hearing that it's not a perfect project, but it's something we need. We agree with the Building Commissioner's decision. McGowan read a letter into the record regarding concerns with traffic, parking, and requirements of the Bylaws.

Bill Idas, no address provided – I've been in my location since 2007. The traffic is bumper to bumper now, and there is no way to accommodate this. This would be a great location for the police station. We need low income housing, but \$2000.00 - \$2,500.00 is not low income.

Peterson made a motion to continue to December 14, 2023. Finneran seconded the motion. Motion carried 5-0.

All in favor.

Board took 5 minute break at 10:05PM.

Application #	Applicant Name:	Address:
18223	Galasso	345 Main St.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	8/28/23	@
Owner authorization	}	}
Dukeau V ZBA - Webster		
Narrative w/ attachment & B decision		
(9) copies plot plan		
(1) 1/4 set Arch plans		
Request referrals	8/29/23	@
Request Abutters	8/29/23	@
Memor. - Planning	9/5/23	@
Cert. Abutters list	9/10/23	@
Memor. - Eng.	9/20/23	@
MacMannin Assoc.	10/11/23	@
Email - La Crette	10/12/23	@
Email - Support (Jimmies)	10/13/23	@
Alanc	}	}
Lescher		
Newbury		
Letter - support AHC	10/17/23	@
Email dated		
Email S. McGarr	10/19/23	@

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

#082-23 Henderson, 9 Highview Drive, East Falmouth – requesting a Special Permit to remove the existing deck and construct a screened porch addition at the rear of the nonconforming dwelling

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

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

Assessor – no comment as presented

Planning – no comment

Conservation – no comment as it appears to be outside of ConCom jurisdiction

Fire – no issues with the project as drawn

Email dated October 12, 2023 from Scott McGann, Health Agent

Correspondence – 1 letter of support

Kevin Klauer, attorney for Applicants – This is an engineer that we don’t typically work with. I can either request a continuance or present now knowing that we will be staking and continue to the next available meeting?

Finneran – There are simple instructions for staking. I’m not inclined to hear this tonight, and it’s not our mistake.

Klauer – They staked the building, but not the lot line. I would request, if the Board is willing, to be able to present tonight; it’s a fairly simple project.

Finneran – We just voted to stay until 10:15PM, we have more to get to and it’s not fair. I have no intention of taking this up.

Finneran made a motion to continue to November 2, 2023. Peterson seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
083.23	Henderson	911 Birchwood Dr.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/ Fee	8/30/23	Klawr
Owner authorization	}	}
(9) Copies site plan		
(9) sets arch. plans		
Request ADU then		
Request referals		
Prefer - Assessors	9/5/23	ⓧ
Prefer - Planning	9/5/23	ⓧ
Cert. ADU then KSI	9/10/23	ⓧ
Prefer - Cal Calm	10/2/23	ⓧ
Prefer - Eng.	10/2/23	ⓧ
Prefer - Fire Dept.	10/4/23	ⓧ
Email BOH	10/12/23	ⓧ
	5) 10/13/23	ⓧ
letter J. Penny	10/16/23	ⓧ
Revised site plan	10/20/23	ⓧ

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

#084-23 Falmouth Resort Owners LLC, 350 Quaker Road, North Falmouth – modification of existing Special Permits to construct four(4) duplex structures over the existing tennis courts and convert a portion of an existing office building into an additional unit

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

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

Planning - Applicant has filed a SPR application with the Planning Board and is scheduled for the 10/10/23 agenda; Email dated October 17, 2023 from Melinda Tondera, Assistant Town Planner

Engineering – comments: the proposed roof area will be directed to a subsurface infiltration areas as recommended; defer to the Conservation Commission for stormwater management and construction erosion controls; project was reviewed for the Planning Board under Site Plan Review – comments attached

ConCom - The Conservation Commission held a hearing under a Notice of Intent which was closed on August 23, 2023. An Order of Condition was issued, approving the project.

Email dated October 11, 2023 from Amy Lowell, Wastewater Superintendent

Email dated October 12, 2023 from Melinda Tondera, Assistant Town Planner

Email dated October 12, 2023 from Scott McGann, Health Agent

Correspondence – 65 emails in opposition

Kevin Klauer, attorney for Applicants –We are seeking to alter the existing developed property and modify the existing Special Permit. This is currently operating as a 253 room hotel with function space and a restaurant. What is being proposed is 4 duplex buildings located at the northern end of the parking lot and an alteration of a portion of the existing building into an additional unit; a total of 9 new units will be added. This project requires multiple levels of review; Site Plan Review from the Planning Board, an Order of Conditions from Conservation which has been approved, and a modification of the Special Permits with this Board. The first meeting with the Planning Board has occurred and went well. We did make some changes to the plans based on the Planning Board’s comments as well as some of the abutter’s, and we will be back in front of them next week. This is a 21.14 acre lot and it’s split zoned between Residential B and Business 3, and is recently under new ownership. We are proposing units in the location of an area already developed where the tennis courts are. The proposal will result in a net reduction of over 6,000s/f of impervious surface being removed There’s no change to parking areas, the new buildings will be flood zone compliant, and they will be elevated with parking underneath. There’ll be no change to the existing traffic flow or design. The proposed lot coverage by structures is 14.4% and the total lot coverage is 35.2 %. The current Special Permits allow for up to 266 units, while the Bylaw allows for up to 332 units; with this proposal we will be at 262

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

units. The required number of parking spaces is 362 spaces, we have provided 373 with 13 handicap spaces. It will be the same use as what is there now, commercial accommodations. It's an improvement to the existing landscaping, and there will be a significant reduction in impervious surface. We are aware of the concerns from the abutters, specifically regarding noise and light. ConCom did not require mitigation plantings where this was a reduction in surface area, but we have revised our landscape and lighting plans. We increase the proposed landscaping as a buffer, and we have reduced the lighting at the rear of the proposed buildings. The landscape plan included arbovites as requested by the abutters, and we have added railing lights rather than having more lights on the walls, to reduce light pollution. The decks at the rear are small and intended for relaxing. There are no proposed communal areas and the new management has been working on concerns of the abutters. As noted, this does have a private sewage treatment facility and we will have to go through the DEP alerting them to any increase. There is a need for commercial accommodations especially on sites that are already designed for it. We have made a number of changes based on the other Boards' comments, and the abutters concerns.

Board discussion

Duffy – These additional units will be in the residential part of the lot?

Klauer – Yes.

Finneran – Of the 21.14 acres, how many of them are in the Residential B part?

Klauer – 17.4.

Morse – Are these units going to be rented as hotel room or will they be fractional ownership?

Klauer – Commercial accommodations, hotel rooms.

Peterson – We hope that you are listening to and speaking with the abutters. We want as much green scape as possible and dark sky compliant lighting.

Public Comment

Jay Mahoney, 42 Santuit Road – I am 4th generation here, we appreciate the Seacrest and what they are doing. This is a substantial change. My understanding was that these were going to be for employees, but now they are rentals. The biggest issues for me is going to be the noise complaints. Adding additional property right on the pond line is like them being in our back yard. I would be in opposition to this and I'm curious how they passed Conservation so well. There are also issues about the water quality in the pond.

Erin Hall, 8 Coatuit Road - We can hear the Seacrest noise on a regular basis, I can only imagine with the addition of these units and 80+ people, that noise will only compound what we hear

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

now and we do call the police. With the addition of these, other than the nuisance, it will change where we live and I am very opposed.

Kelsey Hall, 8 Coatuit Road – I enjoy crabbing off of the bridge and I'm concerned with lighting and people on their porches and will get rid of our beloved creatures. Changes to the Seacrest will affect my neighborhood and pond.

Chris Hall, 8 Coatuit Road – Given the amount of square footage and acreage that they have, they have plenty of space to put these other than where they are proposing them. These buildings are close to the high tide lines. I think they have other options to allow Potters Hole to remain as is and I am in opposition.

Sarah Hines, Quaker Road – We have had a great relationship with the staff at the Seacrest. We were told that guests we required to sign a form that there be no noise after 11PM and we were asked to call either the Police or the general manager if there was. Over the years we would call the general manager because the noise echoes off Potters Hole. The Resort staff did not want to discipline the guests who were staying there, and it has been a problem. Hotels should not promote hotel congregation. We can't leave our windows open and even when they are closed we can still hear. Falmouth police should not be called for noise as they are already stretched out. I would ask the Board to mandate that the fire pit and decks at the rear be removed. The Seacrest is not responsive to the complaints. Why should more units be able to be built?

William Sullivan, 9 Santuit Road – I look over the pond and there is noise that comes over. They are asking to put these units in with a back porch. That porch will be an after-hours party place. We can hear everything. This is a nonconforming use, we are going to fight this. The Seacrest is a valuable asset to Falmouth but so are we. If you approve this we will have to fight this and you have to consider that. We don't want these units built. The tennis courts aren't even there, its parking.

Ronda Scheifer, Cotuit Road - We have been here since 1965 and there is always ongoing issues, sometimes they are addressed and sometimes they aren't. She read a letter into the record.

Paul McMahan, no address provided - I am a newcomer to the area, and have been here for 8 years. We live on Quaker Road and oversee the pond. We purchased this home because of the serenity and beauty of this area. Our view of the ocean will be obstructed and that will impact our property values. Noise pollution is a concern. My wife and I are in opposition of this.

Ellen Ruland for Susan Ruland Buckwalter – 2, 4 & 35 Cotuit Road – We object to the expansion plan. It will change the character of the neighborhood will impact our safety, health, property values and quality of life. We were stunned that this went through Conservation so quickly. These are 2 families, not single families, and they are in a residential area; they have kitchens with a washer and dryer. Presented photos to the Board

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

No name provided, Nauset West – I am very concerned about the effect that this will have on my property, wetlands and beaches. Having more people will make it worse, there will be more nitrogen in the ponds, and I oppose the project.

Klauer – As I mentioned, we wanted to hear comments from the Board and abutters. We are still going through the permitting process. We have a hearing with the Planning Board coming up on Tuesday, I'm not sure how that's going to go. I would like to request a continuation.

Duffy – None of the special permits address how this was permitted, and how they were developed particularly as they refer to the Residential District. I don't think that they are very helpful.

Klauer – I've been in touch with the zoning office, and I've given you copies of the special permits that I have.

Duffy - It would be helpful to know how this place got located in a Residential District, and whether whoever approved it at that time imposed any conditions.

Klauer – We can certainly look into that. As you know, commercial accommodations are allowed under a Special Permit, but we can try to get as much information as we can.

Peterson made a motion to December 7, 2023. Murphy seconded the motion. Motion carried 5-0.

Application #	Applicant Name:	Address:
084.23	Fal Resort Assoc	350 Quaker Road
Document (s) Submitted:	Date Submitted:	Submitted By:
Emails - opposition	10/19/23	(Signature)
- Kolligian	}	}
- Shapazian		
- Hantzes		
- Costello		
- Windner		
- Rogol		
- Buckwalter - Hartman		
- Buckwalter, David		
- McCre		
- Puland		
- Zakarian		
- Watson		
- Mozzone		
- McSheeny		
- Mahony		
Email - opposition	10/31/23	(Signature)
- Schender	10/31/23	}
- Praveck		
Email - opposition	11/2/23	(Signature)
A. Preis	" " "	" " "
Email from B. Reid	11/2/23	(Signature)
Email C. Cuthbertson - opp.	11/6/23	(Signature)

Application #	Applicant Name:	Address:
084.23	Fu/Resat	3571 Quaker
Document (s) Submitted:	Date Submitted:	Submitted By:
Emails - opposition	10/17/23	Ⓟ
- Buckwalter	10/17/23	Ⓟ
Emails - opposition	10/18/23	Ⓟ
- Mozzone	[Large bracket]	[Large bracket]
- Leyne		
- Mozzone		
- Murphy		
- 2 Kandalaft		
- Finamore		
- Kandalaft		
- Wilosz		
Proposed lands & lighting plans	10/18/23	Ⓟ
Emails - opposition	10/18/23	Ⓟ
- Sarmanian	10/18/23	Ⓟ
- Starr	[Large bracket]	[Large bracket]
- Kandalaft		
- Mahoney		
- McMahon		
- Mahoney		
- Kandalaft		
- Ganci		
- Mahoney		

- Crowley
- Canty
- Klerk
- Wilson

22

Application #	Applicant Name:	Address:
084.23	Fal. Resat	350 Quaker
Document (s) Submitted:	Date Submitted:	Submitted By:
Email - Objection	10/17/23	@
- beiter-walis))
- Eskandarian		
- Scala		
- Nachdaff		
- dunn		
- Clayman		
Email w/objections		
- J&C Bezen))
- White		
- Schneider		
- Kennedy		
- Tunica		
- Waters		
- Napoleon		
- McDonald		
- Keohane		
- Quirk - Quintin		
- Indre Sano		
- Gechigial		
- Bagdasarian		
- Giles		

Application #	Applicant Name:	Address:
084-23	Fal. RISEN WIND LLC	350 Quaker Road N. Jc.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	9/7/23	Klaue
denial authorization	}	}
Quitclaim deed		
BR Chart		
Previous Special permits		
(9) sets site plans		
(9) sets arch. plans		
Request referrals	9/8/23	Ⓚ
Request Abutts	9/8/23	Ⓚ
Referral - Planning	9/11/23	Ⓚ
Cert. Abutts list	9/14/23	Ⓚ
Email - B. Roland	9/20/23	Ⓚ
Email - Hartman	10/10/23	Ⓚ
Referral - Eng.	10/10/23	Ⓚ
Public Assessment	10/10/23	Ⓚ
Revised arch. plans	10/10/23	Ⓚ
Email - A. Baule	10/10/23	Ⓚ
Email PB (Mr. Tondem)	10/12/23	Ⓚ
Email S McGarr	10/22/23	Ⓚ
letter - Ambrosini (opp)	10/17/23	Ⓚ
letter - Hall (opp)	}	Ⓚ
letter - Maherus		Ⓚ

8

Zoning Board of Appeals
Minutes of October 19, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Duffy, Murphy, Petrucci
Absent:

Open Meeting:

- 1) Vote Minutes: October 5, 2023 - tabled
- 2) Request for Insubstantial Change(s), Comprehensive Permit No. 35-07 et al, Forest Cove Condominium, 637 Gifford Street, Falmouth – vote anticipated
Finneran – I am a Trustee of a property that abuts this property, and I don't think that it effects my ability to vote.
Duffy – I went out and looked at this property. I think that this is a security issue and that it warrants a full hearing.
Finneran – I think that it's worth a full hearing.
Duffy made a motion to deny the insubstantial change. Finneran seconded the motion. Motion carried 5-0.
Duffy withdrew the motion. Finneran seconded the motion. Motion carried 5-0. All in favor.
Finneran made a motion to continue to December 7, 2023. Murphy seconded the motion carried 5-0.
All in favor.
- 3) Board Discussion –
Finneran – We discussed the need for outside counsel for an upcoming project, and voted that Town Counsel participate. They are very helpful but they are very busy. This is a complex project. We need outside counsel from the start, this is over all of our heads. I would like Town Counsel to be here as our filter but I've changed my mind.
Stockman – We did apply to MA Housing for some extra help. You're not allowed to apply until you have received the comprehensive permit filing. MassHousing has two attorneys that we could potentially assist us; I can scan and send you what this consultant does. MassHousing requests you to select from this pool, and I have requested the two attorneys. The third individual is not an attorney; she is a Planner, but very knowledgeable.
- 4) Board Updates - none
- 5) Future Agenda Items – Next meeting October 26, 2023

Meeting adjourned 10:35PM.

Respectfully submitted, Ashley E. DeMello, Office Assistant