

Findings and Decision

Site Plan Approval

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Date: March 14, 2019

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Applicant: Falconi Properties, LLC
4 Franklin Street, Milton, MA 02186

Site Address: 7-9 Pleasant Street, Milton, Massachusetts
Milton Assessors' Map ID: Map I Block 4 Lot 9

Title: Book 34877, Page 533, Norfolk Registry of Deeds
Default Judgment, Massachusetts Land Court
No. 17 MISC 000235 (GHP)

A. Procedural History

1. An Application for Site Plan Approval was filed by the Applicant for 7-9 Pleasant Street on November 30, 2018.
2. A public hearing was held by the Planning Board on January 3, 2019, February 14, 2019 and March 7, 2019 on which date the hearing was closed and the Planning Board voted its decision.
3. The Applicant concurrently filed an application with the Milton Board of Appeals for use and dimensional variances, a special permit to change a pre-existing nonconforming use and modifications of existing special permits. The Board of Appeals held a public hearing on December 13, 2018 and January 23, 2019 on which date the Board of Appeals closed the hearing, deliberated and voted its decision.
4. The Board of Appeals unanimously voted to grant variances for change of use to five apartments on the second floor, for parking setbacks, and to allow tandem parking as shown on the Site Plan and for one free standing sign; to grant a special permit to allow the change of use for the second floor from the preexisting nonconforming commercial bakery use to five apartments including the plan for parking as shown on the Site Plan; and to grant the requested modifications in existing permits to allow location of the catering use and café use on the ground floor, sixteen indoor seats to be used when outdoor seating is not in use, and to grant a five year time limited special permit for the additional café hours, 7:30 a.m. to 1 p.m., on Sunday mornings.

The Board of Appeals decision is subject to conditions including demolition of a rear 1500 square foot addition, limitation on the number of apartments to five, minimum one year leases for the apartments, removal of two side windows, and site improvements as shown on the Site Plan including fencing, landscaping and parking as well as approval of a site

plan by the Milton Planning Board, and incorporation of all conditions of the Planning Board decision into the Board of Appeals decision.

5. Materials submitted by the Applicant were reviewed by the Board and the Applicant provided opportunities for the members of the Planning Board to view the building and the site.
6. Throughout its public process and deliberations, the Board considered these submitted materials as well as statements and representations of the Applicant, its consultants and representatives, Town officials and the public.

B. Site Plan Approval Criteria

1. Section VIII, Subsection D.1.a of Chapter 10 of the General Bylaws of the Town of Milton (the "Zoning Bylaws") requires in part "No multi-family building, excluding two family residences but including attached single family residences, shall be constructed or externally enlarged, and no area for parking, loading or vehicular service, including driveways giving access thereto, associated with such buildings or residences shall be established or substantially changed, except in conformity with a site plan bearing an endorsement of approval by the Planning Board."

Section VIII, Subsection D.2 provides in part "The site plan shall show, among other things, zoning boundaries, existing and proposed topography, all existing and proposed buildings, their uses, elevations, parking areas, loading areas, driveway openings, service areas, and all other open space areas, all facilities for sewage, refuse and other waste disposal, and for surface and subsurface water drainage and all landscape features (such as walks, planting areas with type and size of stock, trees and fences), lighting fixtures and patterns and signs on the lot."

2. Section VIII, Subsection D.3 provides "In considering a site plan under this Section the Planning Board shall assure, to a degree consistent with a reasonable use of the site for the purpose permitted or permissible by the regulations of the district in which located:
 - a. protection of adjoining premises against detrimental or offensive uses on the site;
 - b. convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements;
 - c. adequacy of methods for disposal of sewage, refuse and other wastes resulting from the uses permitted or permissible on the site, and the methods of drainage of surface water;
 - d. adequacy of space for off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment;

- e. proper use of the site with respect to unit density and proximity of adjacent buildings to each other;
- f. the adequacy of lighting to maintain a safe level of illumination on the site and whether lighting is properly shielded to protect adjacent properties.”

C. General Findings of Fact

1. The project site, which is in a Residence C Zoning District, consists of one lot, 18,959 sf in area. The lot is occupied by one three story historic commercial building, constructed in 1892. The building has been used since 1892 as a commercial bakery, offices and as a retail store and more recently as a café. The Board of Appeals granted special permits for the café in 1995, for outdoor seating in 1999, for a rear wing housing one apartment in 2009 and for use of part of the second floor for a catering kitchen, in 2017. The Applicant proposes to demolish a 1500 square feet rear wing, continue existing permitted and pre-existing nonconforming uses on the ground (first) floor and third floor and to change the use of the second floor to apartment use from the pre-existing nonconforming commercial bakery use.
2. The building was placed on the National Historic Register in 2000 and there are extensive records about the building at the Massachusetts Historical Commission archives noting the long continuing use of this building as a commercial bakery. G.H. Bent, the owner of the bakery business, began his business in the early 1800's on Highland Street and moved to this site in 1892. Along with other bakery products, crackers known as “water crackers” or “hard tack” were made here using water from springs in Milton, were nationally marketed by the National Biscuit Company until 1926, and continued to be manufactured by the property owners until very recently. These crackers were popular with the general public and were believed to have health benefits, but were also used by explorers and outfitters in the 1800's, and by soldiers during the Civil War and World War II, primarily because they lasted for a long time without spoiling.
3. The variances, special permits and modifications of existing special permits required for the proposed uses have been granted by the Board of Appeals.
4. In conformance with the requirements of the Zoning Bylaws and Planning Board regulations and practice the Applicant submitted the following exhibits to the Board:
 - a. A Site Plan Approval Application dated October 31, 2018.
 - b. A Site Plan by Morse Engineering Co. Inc. dated October 30, 2018 and last revised on February 15, 2019.

- c. Conceptual Design Plans for the building interior and exterior and front façade and landscaping, including depictions of exterior mechanicals, dated February 7, 2019, by Steve Todisco of RDG Inc.
- d. Photograph of a 3-D Design Plan by Steve Todisco for the site that was exhibited at the hearing.
- e. A Turning Radius Plan for the 7 Pleasant Street Site Plan by Morse Engineering dated January 31, 2019.
- f. A Photometric Plan 1.31.2019 and updated February 28, 2019.
- g. Photo and specifications by Kichler for the type of light fixtures to be attached at just below five - six feet, on fence posts around the driveway and rear parking area.
- h. Photo and specifications from Lithonia Lighting D-Series Size 1 Led Wall Luminaire for downward facing light fixtures to be affixed to the building.
- i. Specifications including sound emission characteristics of heating and cooling systems for first (ground) floor and second (apartment) floor from Steve Delaney of TrueBlue Plumbing and Heating dated January 8, 2019.
- j. Photo and Specifications for CaptiveAire commercial kitchen ventilation system DU-HFA Centrifugal Upblast Direct Drive Fans.
- k. Storm Water Management Calculations and Drainage Report by Morse Engineering dated December 16, 2014.
- l. Photograph showing the type of wood dumpster enclosure proposed for the site
- m. Photo of proposed fencing, a 7-foot natural cedar fence with a latticed upper edge, proposed for the driveway, parking area and outdoor seating area.
- n. Rendering and description of new free-standing sign.
- o. Sample apartment lease.
- p. G. H. Bent Co. records from Massachusetts Historical Commission

D. Considerations During Planning Board Review

The Planning Board has considered the plans and written documents submitted, the presentation by the Applicant and the testimony from neighbors, public officials and other Milton residents and is of the opinion that the Applicant has met the standards for granting approval based upon the following:

- 1. The Applicant has provided protection for adjoining premises against detrimental or offensive uses on the site by providing the following site plan features.
 - a. Solid Waste Management
 - 1) The Applicant presented a plan for storage of solid waste as shown on the Site Plan and for removal of solid waste at weekly intervals between 10 a.m. and 3 p.m. by conventional trash trucks.

- 2) The Applicant agreed to create an enclosed secure dumpster location as shown on the Site plan, which is a minimum of ten feet from any lot line.
- 3) The Applicant will require its café tenant to make use of food waste composting services if available at this site.
- 4) The Applicant has provided a design for clean and secure waste storage.

b. Shielding Noise and Light

- 1) The Applicant will provide vegetative screening, consisting of arborvitae no less than 6' at time of planting, with a 7 foot high natural cedar fence with a lattice top around the driveway, parking area and outdoor seating, as shown on drawings provided to the Board, and located as shown on the Site Plan. Lighting on the building as noted on the site plan is designed to face downward and parking lot lighting has been modified at the request of neighbors to be residential style lighting attached to fence posts around the parking area and driveway.
- 2) Primary access and egress to the building will be through the door next to the elevator on the northwest corner of the building and will be handicapped accessible.

c. Fumes and Odors

This building, which has housed a cafe since 1995, currently has no exterior ventilation. The Applicant will install a conduit for kitchen venting in the center of the building up through the roof. The conduit's location is designed so as to be away from neighboring properties. The kitchen exhaust system is designed to blow vented air high up and is of a type suitable for the small breakfast and lunch food service operation allowed by existing permits as well as for the catering kitchen.

If either operation is granted zoning relief in the future to substantially change or expand, the property owner is required to return to the Planning Board to review the suitability of the kitchen venting system.

2. The Applicant has shown that there will be convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements.

a. Sidewalks

- 1) The Applicant will improve the existing sidewalk area in front of the building according to the Town's specifications.
- 2) The Applicant will mark and sign street parking or will pay for the cost if the Town does the work, as recommended by

the Traffic Commission and approved by the Select Board.

- b. **On-site Traffic Circulation:** Markings will be provided in the driveway for two way use; parking spaces on the street in front of the building will be marked; time limit signs and "no parking" signs will be placed on the other side of Pleasant Street, subject to Traffic Commission recommendation and approval by the Select Board. The Town Engineer recommends these changes to reduce the volume of pedestrians having to cross Pleasant Street, slow traffic and improve safety.
3. The Applicant has provided for rear parking area security by proposing installation of a security camera in the rear parking lot and for providing rear parking lot lighting.
4. The Applicant has provided for adequate on-site traffic circulation. A vehicle turning area plan provided by the applicant's engineer demonstrates that both cars and small trucks, the only type to be allowed on the site, can enter the site and turn around and exit forwards.
5. The Applicant has demonstrated that the impact of the project will be minimal on the Town's infrastructure.
 - a. The second floor of the building proposed for use for apartments has an existing by-right use as a commercial bakery. Such a use would employ a substantial number of employees, would require at least 11 on-site parking spaces rather than the five for the apartments, would require frequent large truck traffic, and, as a pre-existing nonconforming use, would have no restriction as to fencing, landscaping, lighting, on-site parking or hours of operation. The proposed use along with the proposed site improvements will have less impact on the neighborhood.
 - b. The wood frame building is in poor condition; all systems require replacement; these conditions create a fire hazard. Once the building is renovated inside with a code compliant elevator, new electrical and plumbing systems, code-compliant handicapped access, and emergency exits as well as a sprinkler system throughout the building, there is much less possibility that the Town's public safety officials will have to respond to fire, building safety or health code issues.
 - c. This plan provides for preservation of a historically significant building valued by the residents of the Town and the Town's Historical Commission.
 - d. The proposal addresses two goals of the Town's Master Plan: diversification of housing and preservation of historic structures.
6. The Applicant has proposed adequate methods of disposal for sanitary sewage, refuse and other wastes resulting from the uses permitted or

permissible on the site, and for adequate methods of drainage for surface water.

- a. The Applicant has submitted adequate plans for disposal of refuse and for methods of drainage of surface water at the site;
- b. The project can use existing sanitary sewer service;
- c. The stormwater report and drainage plan proposed by the Applicant has been approved by the Town Engineer as adequate to manage stormwater runoff from the site.

7. The Applicant has provided adequate space for off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment.
 - a. Small trucks only will be allowed on the site: no larger than a six wheeled box truck.
 - b. As shown on the Site Plan there is an area at the driveway entrance for a small truck to pull over and there is adequate turning area on site for small trucks.
 - c. The café operation and the catering business allowed at this site are small and will require infrequent small truck deliveries.
8. No buildings are being added to the site. The apartment use of approximately 2600 square feet inside the second floor replaces an existing apartment use of 1500 square feet and allows the removal of the 1500 square foot rear wing, reducing the building footprint. The Applicant has shown proper use of the site with respect to unit density and proximity of adjacent buildings to each other.
9. The Applicant has provided plans for lighting that ensure adequate security and protects from dispersal of light onto neighboring properties.

E. Decision

In consideration of the above, the Planning Board has determined that the apartment use proposed for 7-9 Pleasant Street along with existing allowed mixed uses of small café, catering and office, meets or exceeds the minimum standards for site plan approval for such a use, and therefore the Board grants Site Plan Approval subject to the following conditions:

1. These terms of Site Plan Approval shall remain in force and enforceable for so long as the second floor is used for the five apartments. Any amendment of these terms shall be made upon applicant's application and after a hearing before the Planning Board except insofar as the Planning Board has reserved the specific power to amend.
2. The Site shall be laid out in substantial conformity with the Site Plan..

3. Use of the site shall be in substantial conformity with materials and description provided to the Planning Board at the public hearing.
4. A seven-foot fence shall be located on the site as shown on the Site Plan and of materials and appearance substantially similar to description and drawings provided to the Planning Board: a seven-foot high natural cedar fence with a latticed top portion.
5. Arborvitae shall be planted around the driveway lot line, parking lot at the rear and outdoor seating area substantially as shown on the site plan. The Applicant shall promptly replace any dead plant material so as to maintain the vegetative buffer at all times.
6. Landscaping, including fencing and location of a bike rack in front of the building and the outdoor seating design, shall be in substantial conformance with the design drawing of the front of the building by Steve Todisco, and on the Site Plan dated February 15, 2019.
7. Exterior lighting shall be in substantial conformance with the specifications and description provided to the Planning Board: residential style lighting fixtures by Brownlee Lighting attached to the fence around the driveway and parking area; downward facing exterior wall fixtures by Lithonia Lighting and Brownlee Lighting and pole mounted fixtures by Lumenpulse, or equivalent or better all as shown on the Site Plan and the Photometric Plan. All exterior light fixtures to be controlled by an astronomical clock or daylight sensors, and all shall have LED source with consistent color temperature between 3000k and 3500k.
8. One security camera shall be provided for the rear parking lot.
9. Heating and cooling systems shall be installed in substantial conformance with conceptual building design drawings by Steve Todisco and specifications by Steve Delaney for heating and cooling systems. The noise emissions from these systems is expected not to exceed ambient noise levels. After these systems are in operation, if the noise from the heating and cooling systems is in excess of ambient noise levels, so as to disturb the neighbors abutting the property, , then the Applicant shall install an acoustic enclosure or barrier to suppress the excess sound.
10. Kitchen cooking ventilation shall be provided through conduits to the building's roof as shown in design drawings by Steve Todisco and shall be provided by equipment substantially similar or better than the specifications for CaptiveAire Commercial Kitchen Ventilation provided to the Planning Board. This venting system is designed for the current permitted small café and catering kitchen use. The conduit design allows for expanded or different cooking ventilation if necessary. Should the Board of Appeals at some later time approve a substantial change in the size or type of food service at the café, then the owner of the property will

be required to return to the Planning Board for a hearing on whether the Site Plan approval should be modified with a change in the required venting system.

11. A minimum of five apartment parking spaces shall be located as shown on the Site Plan and each parking space shall be identified with a sign.
12. A minimum of six parking spaces shall be located as shown on the site plan for employees who work in the building and each space shall be identified with a sign.
13. Café delivery trucks brought on site shall be limited to a size that is no larger than a 6-wheel box truck. The Applicant shall notify the commercial tenants of this requirement, and the Applicant shall be responsible to enforce this requirement.
14. Trash pick-up shall be scheduled on weekdays between the hours of 10 a.m. and 3 p.m.
15. Arrangements for construction shall be in substantial conformance with the construction description provided to the Planning Board in the memorandum to the Planning Board dated February 13, 2019.
16. The Planning Board recommends that 2 hour parking spaces shall be marked on the street and signage provided as shown on the Site Plan, subject to recommendation by the Traffic Commission and approval by the Select Board.
17. The site shall be a no smoking site except for one designated smoking area as shown on the Site Plan. No smoking signs shall be posted at entrances to communicate this requirement.
18. Drainage improvements shall be completed on the driveway and in the street as shown on the Site Plan.
19. The Applicant and its successors and assigns are responsible for ensuring that apartment residents, their family, friends, relatives, invitees, visitors, agents and servants do not make or suffer any unlawful, noisy or otherwise offensive use of the development grounds, including congregating for any substantial length of time in the rear parking area, create any disturbance, or commit or permit any nuisance to exist thereon, or to damage or deface any part of the development grounds.
20. The Applicant and its successors and assigns shall be responsible for ensuring that apartment residents observe quiet hours between 11 p.m. and 6 a.m.

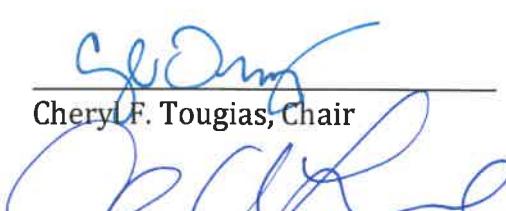
21. The Applicant and his successors and assigns shall be responsible for ensuring that the building's tenants including commercial tenants observe all conditions in this Site Plan approval by providing appropriate terms in tenant leases.
22. The exterior of the building shall be maintained in its historic appearance. Changes to the exterior shall be reviewed with the Historical Commission prior to execution.
23. The dumpster shall be located as shown on the Site Plan.
24. Solid waste shall be removed between the hours of 10 a.m. and 3 p.m. on weekdays, once a week or more frequently as necessary to maintain a clean and odor free waste area.
25. This Site Plan Approval is granted subject to compliance with all other applicable laws, bylaws and regulations including all Massachusetts Building Code requirements. Should any aspect of this decision conflict with Building Code requirements this Site Plan Approval shall be deemed modified to conform to such requirements.
26. This Site Plan Approval may be amended by the Planning Board in accordance with the required procedures, depending upon whether the Planning Board determines the amendment to be an insubstantial or substantial change. The conditions of this Site Plan Approval may be amended, altered or other conditions may be imposed at any time and from time to time by the Planning Board after public notice and a hearing. The Planning Board may exercise such right to amend upon notification by the Building Commissioner or other Town officials that there is repeated violation of the provisions herein and the procedure for amendment shall be subject to the usual requirements for notice, advertisement and a hearing.
27. This Site Plan Approval shall be binding on the Applicant and its successors and assigns and its provisions shall be enforceable against the Applicant and its such successors and assigns.
28. Violation of any condition contained herein or failure to comply with the Site Plan shall subject the Applicant to zoning enforcement action in accordance with the remedies set forth in G.L. c. 40A and all other

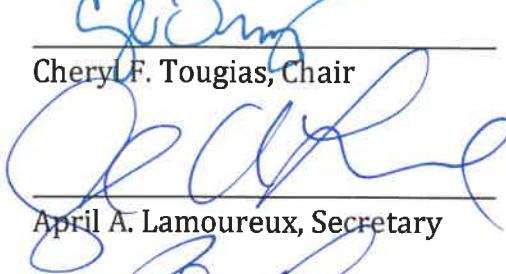
appropriate legal remedies, and, in addition, to revocation of this Site Plan Approval upon failure of the Applicant or its successor in interest to cure such violations to the satisfaction of the Planning Board.

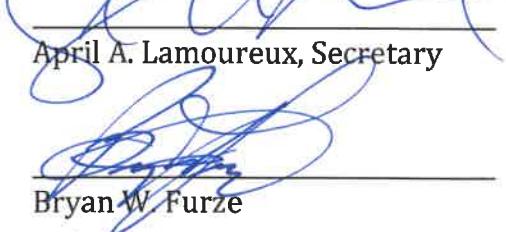
29. This Site Plan Approval decision shall be recorded with the Norfolk County Registry of Deeds by the Applicant at its own expense within 30 days of its becoming final. There shall be a marginal reference in the deed of the Owner to this Site Plan Approval.
30. This Site Plan Approval is subject to the requirement that the Applicant shall obtain all other approvals required from regulatory boards such as the Board of Health, the Select Board, the Board of Appeals, and the Building Commissioner.

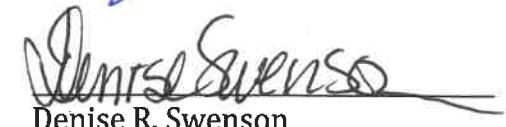
Executed at Milton, Massachusetts the 14th day of March, 2019.

Milton Planning Board


Cheryl F. Toulias, Chair


April A. Lamoureux, Secretary


Bryan W. Furze


Denise R. Swenson


Richard J. Boehler