

Zoning Board of Appeals Decisions Decisions for: 08-11-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 074-16

APPLICANT: STEPHEN WOLSELEY of Hatchville, MA

OWNER(S): Stephen Wolseley and Christopher M. G. Wolseley

SUBJECT PROPERTY: 313 Old Main Road, North Falmouth, Massachusetts
Assessor's Map: Map 02, Section 04, Parcel 004, Page 000A

DEED/CERTIFICATE: Book 1572 / Page 093

SUMMARY: Special Permit Granted

PROCEDURAL HISTORY

1. Under a date of July 6, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. of the Code of Falmouth to acknowledge that two dwelling units existing in the main structure prior to May 19, 1959 on subject property known as 313 Old Main Road in North Falmouth, MA.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on August 11, 2016.
4. The public hearing was terminated on August 11, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Kathleen Ahern Wolseley who reviewed and discussed existing two dwelling structure with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

7/6/2016 A notarized letter dated January 19, 2016, submitted to the file by the applicant from Shirley R. Dunkle of 316 Old Main Road, stating knowledge of subject dwelling being two units.

7/6/2016 A notarized letter dated December 28, 2015, submitted to the file by the applicant from Stephen Ballentine of 304 Old Main Road, North Falmouth stating knowledge of an apartment at the rear of the dwelling on subject property and name of tenant.

7/6/2016 A notarized letter dated 1/16/2016 was submitted to the file by the applicant from Richard T. Nowak of 307 Old Main Road, North Falmouth (since 1963), noting knowledge of an apartment in the dwelling structure on subject property.

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

7/6/2016 Applicant submitted application, fee, copies of plans (site and floor plans), a letter from

National Grid of 1/4/2016 noting two services on subject property, photos of structure, old Assessors' cards and copies of utility bills.

Letters/Referrals/E-mails from Town Departments

7/7/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

7/12/2016 Referral submitted to the file by the Planning Staff with no comment.

7/14/2016 Referral submitted to the file by the Historical Commission staff that states: If any exterior changes are going to be made to either dwelling then needs to come before Historical Commission.

7/14/2016 Referral submitted to the file by the Conservation Commission Agent that has no comment.

8/9/2016 Referral submitted to the file by the Engineering Department that states: We reviewed the historical aerial survey photos we have in our office and the current aerial photo provided by MassGIS electronically, and the building footprint visible in the 1950 photo appears to be the same as the footprint visible in the 2014 photo. See attached (copy of 1950 survey aerial and 2014 survey aerial).

Plans submitted by Applicant/Applicant's Representative

Hand drawn floor plans of subject dwelling that includes a floor plan of the apartment - with a Board date 'received' stamp of July 6, 2016; and

"Site and Sewage Plan" for Richard Wolseley Estate drawn by Doyle Engineering Associates, Inc. dated March 30, 1995 - stamped and signed by both John P. Doyle, III, RLS and William Lieberman, PE with a Board date 'received' stamp of July 6, 2016.

Hearing:

Kathleen Ahern Wolseley reviewed the subject property that has been in the Wolseley family for over forty (40) years and explained that the family has been trying to sell the property for over one year. The property has been assessed and insured as a two-family dwelling throughout the years. She stated that the question of the Town recognizing the structure as a two-family has been brought up consistently, so the family is requesting a special permit asking the Town to recognize the structure as a two-family structure that was in existence prior to May 19, 1959. She informed the Board that there have been building permit applications and approvals throughout the years for work to be conducted on the structure with no questions by the Town (1995 renovations due to fire within dwelling structure, 2002 renovation and re-roof).

The Board reviewed the documents submitted and discussed the subject property and two dwelling structure. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 - 0.

Chairman Bielan closed the hearing.

FINDINGS

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 313 Old Main Road in North Falmouth contains 19,878 square feet of Residential B zoned land that is located within a Historic District. The applicant applied under Section(s) 240-3 A. of the Code of Falmouth for Town acknowledgement that two dwelling units existed in the main structure prior to May 19, 1959 on subject property. The dwelling structure, according to Assessors' records, is circa 1790; old Assessors' cards from 1957 shows rental income from one unit at \$65.00 and

one at \$60.00. The aerials submitted to the file by the Engineering Department shows that the structure is unchanged since 1959 photo. The smaller dwelling unit is located in the rear of the dwelling with separate entrance – no shared entrances. Two of the three (3) letters submitted to the file gave evidence that the two-family structure existed prior to May 19, 1959; the third letter from an abutter states that he has been a neighbor since 1963 and knows that the rear unit has been rented consistently through the years to present.

Section 240-3 of the Code of Falmouth – “Preexisting structures and uses.” – sub-section A. states: Anything in the bylaw contrary in the zoning bylaw notwithstanding, the residential use of two or more dwellings on a single lot shall be deemed a preexisting nonconforming use if commenced prior to May 19, 1959, and may only be altered, extended or modified by special permit pursuant to this section provided the Board of Appeals finds through a preponderance of credible evidence that said use commenced prior to May 19, 1959, and has not been abandoned or not used for a period of two years or more.

The Board finds that the applicant submitted credible evidence to the file in the form of three notarized letters; two letters from immediate abutters that have lived as abutters prior to 1959 and had knowledge of the structure being a two-family structure and a third letter from an abutter that has resided there since 1963 and has knowledge that the structure is a two-family structure with the rear unit being rented out separately. The Board further finds that the Town Engineering Department submitted aerial photos from 1950 and 2014 that shows the structure to be unchanged from 1950 to 2014. Furthermore, the Board finds that the old Assessors’ card dated 1956 that was submitted to the file shows the structure with notation that income was generated from the dwelling.

The Board finds through testimony by the applicant, that there is currently no plan to alter or change the pre-existing nonconforming structure on subject property, but is seeking a Special Permit to have the Town acknowledge through submission of evidence that the structure has existed as a two-family structure prior to May 19, 1959.

In addition to the above findings, the Board finds that the acknowledgement of a two-family dwelling on subject property prior to May 19, 1959 is in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as it is relevant to Section 240-3 A. of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the acknowledgement of a two-family dwelling as there is no current plan to alter or change the existing structure.
- B. The site is suitable for the proposed use as the property is zoned residential and has, according to information submitted to this file, been used as a two-family dwelling prior to May 19, 1959.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be unchanged as this permit does not include any alteration or change to the existing structure on subject property.
- E. The sewage disposal system was not in question in this special permit and there was no referral from the Board of Health received by the Board of Appeals.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The two-family dwelling acknowledgement discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the Board’s acknowledgement that a two-family dwelling structure has existing on subject property prior to May 19, 1959 as discussed herein and finds that the criteria set forth in Section 240-3 A. has been submitted and reviewed by the Board of Appeals for consideration of this Special Permit. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Van Keuren made a motion to Grant the Special Permit with conditions. Member Murphy seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 5 – 0 to Grant a Special Permit to Stephen Wolseley (herein referred to as Applicant) under Section(s) 240-3 A. of the Code of Falmouth to acknowledge that a two-family dwelling structure has existed on subject property prior to May 19, 1959. This special permit is subject to the following conditions:

1. The acknowledgement that the structure has been a two-family dwelling structure prior to May 19, 1959 as evidenced by information and letters submitted to the file does not include any change or alteration of the structure or its use at this time and therefore this approval does not approve any changes or alteration to subject structure.
2. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)
3. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk’s office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 074-16

Applicant: STEPHEN WOLSELEY of Hatchville, MA

Subject Property: 313 Old Main Road, North Falmouth, MA
Map 02, Section 04, Parcel 004, Lot 000A

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 5 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, Board of Appeals

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:
SP 074-16 Wolseley, filed with the TC 8/18/16