

## Zoning Board of Appeals Decisions Decisions for: 12-01-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: #109-16

APPLICANT: CYNTHIA M. BOURGET-MENDES and MARK L. MENDES  
of West Falmouth, MA

OWNER: Neil F. Powell, Trustee of The Neil F. Powell Nominee Trust

SUBJECT PROPERTY: 194 Old Main Road, North Falmouth, Massachusetts  
Assessor's Map: Map 05A, Section 01, Parcel 007, Lot 002

DEED/CERTIFICATE: Book 9883 / Page 218

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 18, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-51 A.(5) of the Code of Falmouth to allow conversion of two apartments to office space and maintain four existing apartments within the existing structure on subject property known as 194 Old Main Road, 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 December 1, 2016.
4. The public hearing was terminated on December 1, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman sitting as Chairman, Member Ed Van Keuren, Member Paul Murphy as Acting Clerk and Associate Gerald Potamis sitting as voting member, made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals. Note: Clerk Terrence J. Hurrie recused from the proceedings.
5. The applicant was present at the hearing and reviewed and discussed proposed plans 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

11/30/2016 Letter submitted to the file from Julie A. Medeiros of 48 Perry Road, No. Falmouth and is owner of 12 Shannon's Way in North Falmouth (abutter), stating support for the proposed.

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

10/18/2016 Application on behalf of Ms. Bourget-Mendes was submitted to the Board of Appeals office with copies of plans, signed P & S Agreement and fee for scheduling a public hearing

11/16/2016 Letter from Ms. Bourget-Mendes (applicant) with attached Site Plans, Architectural Plans and basement plans of structure on subject property

Note: From 10/18/16 through 11/28/16 there are e-mails from staff to applicant with applicant responses

regarding application and needed information

#### Letters/Referrals/E-mails from Town Departments

10/21/2016 A referral from the Historical Commission was submitted to the file with the comments: The applicant will be before the Commission on November 1st to review the installation of a freestanding sign and handicap accessible ramp. There are no other proposed exterior changes at this time. The Commission will copy the ZBA with its decision.

10/24/2016 A referral from the Falmouth Fire Rescue Department was submitted to the file that noted that depending on the level of any renovation there may be a requirement to install a fire sprinkler system and due to mixed use a requirement will be required to modify or install a monitored fire alarm system.

10/24/2016 A referral from the Planning Department staff was submitted to the file with no comment

10/26/2016 A referral from the Director of Assessing was submitted to the file with no comment

10/31/2016 A referral was submitted to the file from the Conservation Commission that had no comment

11/21/2016 A referral was submitted to the file from the Engineering Department with comments and a note to post a house/unit number that is visible from the street.

#### Plans submitted by Applicant/Applicant's Representative

"Site Plan for 194 Old Main Road Falmouth, MA" as drawn by Warwick & Associates Inc. dated 10/25/2016 with a final revision date of 11/15/2016 – the plan was stamped, signed and dated 11/16/2016 by Gary S. Labrie, PLS – the plan has a Board date 'received' date of November 16, 2016;

"Renovation to: Warren Joseph Nye Double House 194 Old Main Road North Falmouth, Massachusetts" as drawn by Giampietro Architects consisting of drawings AB1 'Existing Elevations', AB2' Existing Floor Plan", AB3 'Existing Second Floor Plan', A1 'Proposed Elevations' and A2 'Proposed First Floor Plan' – all dated November 16, 2016 – not stamped and with a Board date 'received' stamp of November 16, 2016; and

A hand drawn 'Unfinished' Basement Floor Plan – not dated – with a Board date 'received' stamp of November 16, 2016.

#### Hearing:

Cynthia Bourget-Mendes and Mark Mendes reviewed the existing structure located in a Business 3 zoned district that currently contains six one-bedroom apartments. They are proposing to eliminate two of the one-bedroom apartments on the first floor and convert space to office space for her law practice. She explained that the apartments were created back in the 1940's to create apartments during WWII and has been used as such since then. Four apartments will remain and will be one-bedroom units. Historical Commission voted an approval on the proposed handicap ramp that will be located near the entrance on the northerly façade of the structure.

The Board discussed plans with the Mendes' and reviewed parking, fire/sprinkler system, trash pickup and landscaping on site. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

Virginia Valiela of 193 Old Main Road suggested landscaping at handicap ramp area facing street and a location for a dumpster on site.

Dan Small of 209 Old Main Road stated opposition to this project noting this is a historic area and the Town needs to keep apartments that we have – not eliminate them.

Ms. Bourget-Mendes responded that her officer was expected to purchase the property as she agreed to keep four apartments so tenants were not displaced.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 4 - 0.

Chairman Foreman 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 194 Old Main Road in North Falmouth contains 49,703 square feet of Business 3 and Residential B zoned land that is located within the Historic District and the rear portion of the property is located within the Natural Heritage and Endangered Species Program (NHESP). The front portion of the lot is zoned Business 3 and the structure is located completely within this zoning. The rear portion of the lot is zoned Residential B. The applicant applied under Section(s) 240-3 and 240-51 A. (5) of the Code of Falmouth to allow to maintain four apartments and create office space for professional use within existing structure on subject property. Professional offices is allowed by-right in a Business 3 zone and multi-family housing requires a special permit in said zone. The structure was created in the 1840's and according to testimony by the applicants, in 1940 it became apartments (housing needed during WWII) and has existed as such through the years. The applicant submitted to the file a copy of an executed Purchase and Sale Agreement for subject property. The exterior of the building will be improved with no additions being proposed to the structure.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

Section 240-51 A. (5) of the Code of Falmouth requires a special permit for multi-family use within a Business 3 zoned district.

The Board finds that the proposed change to the pre-existing nonconforming structure on subject property eliminating two of the six existing apartments, creating office space on the first floor and maintaining the four remaining apartments will not be substantially more detrimental than what currently exists.

The Board finds that the proposed use of four one-bedroom apartments and a professional office use within the existing structure is appropriate for the Business 3 zoned property and does not appear to overburden the property. The Board further finds through testimony by the applicant that the property will be improved and maintained within the integrity of the Historical District. Furthermore, the change on subject property as discussed herein is in keeping with the intent of Business districts within the Town.

The Board finds that the existing nonconforming front yard setback shall not be increased through the proposed plans and there are no new nonconformities being created through the proposed change of use on subject property. The Board further finds that lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth.

The Board finds that the Falmouth Historical Commission approved the handicap ramp and re-painting of structure as set forth in a "Certificate of Appropriateness" dated November 3, 2016. The Board further finds that the applicant shall return to the Falmouth Historical Commission for approval of a sign.

The Board finds through testimony by the applicant that they are amenable to eliminate the trash barrels and locate a dumpster at the northeast corner of the lot that will be used by all tenants and shall be buffered so as not to be seen from the roadway (Route 28A). The Board further finds through testimony by the applicant that they are amenable to installing a handicap accessible parking space at the northeast corner of the existing structure and that said parking space will be paved. Furthermore, testimony by the applicant was that they intend to maintain the landscape and buffering along the front, side and rear property lines.

The Board finds with the creation of a handicap parking space as noted above, there will be ten (10) parking spaces on subject property and testimony was made by the applicant that the ten (10) spaces will accommodate, through peak demand times, all employee and tenant needs.

The Board finds through discussion with the tenant that they will meet all the fire and/or sprinkler requirements for public safety in accordance with the Fire Department's regulations.

In addition to the above findings, the Board finds that the proposed changes within the existing structure on subject property will be 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 follows:

- A. The site is adequate in terms of size for the proposed as the proposed changes are primarily interior, no increase to existing nonconforming setback, no new nonconformities and lot coverage is well within compliance of Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned Business 3 and the proposed professional office space on the first floor of the structure is a by-right use and the four one-bedroom apartments proposed are allowed by special permit from the Zoning Board of Appeals.
- C. There will be no impact on traffic flow and safety as there is a decrease of two bedrooms on site and additional office space that will possibly create the same or less amount of trips to and from the site; and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. A sewage disposal system is in place and will be verified by the Board of Health as appropriate for the changes discussed herein prior to the issuance of a building permit.
- F. There are adequate utilities to subject property by virtue of an existing use on site.
- G. The proposed elimination of two one-bedroom apartments and the creation of professional office space within the existing dwelling as discussed and represented herein will have no effect on the supply of affordable housing in Falmouth as four apartments will remain on subject property.
- 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, although testimony was given that the tenants pay less than the market value.

The Board of Appeals has weighed the effects of the proposed professional office space eliminating two one-bedroom apartments and maintaining the remaining four apartments on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion. Motion carried 4 – 0.

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 4 – 0 to Grant the Special Permit to Cynthia M. Bourget-Mendes and Mark L. Mendes (herein referred to as Applicant) under Section(s) 240-3 and 240-51 A. (5) of the Code of Falmouth to allow conversion of two apartments to professional office space and maintain four existing apartments within the existing structure on subject property known as 194 Old Main Road, North Falmouth, MA. This special permit is subject to the following conditions:

1. The elimination of two one-bedroom apartments, creation of professional office space on the first floor, maintaining four one-bedroom apartments, handicap paved parking, dumpster for tenant trash, landscape and buffering of site and use of the subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan for 194 Old Main Road Falmouth, MA" as drawn by Warwick & Associates Inc. dated 10/25/2016 with a final revision date of 11/15/2016 – the plan was stamped, signed and dated 11/16/2016 by Gary S. Labrie, PLS – the plan has a Board date 'received' date of November 16, 2016;

- "Renovation to: Warren Joseph Nye Double House 194 Old Main Road North Falmouth, Massachusetts" as drawn by Giampietro Architects consisting of drawings AB1 'Existing Elevations', AB2' Existing Floor Plan", AB3 'Existing Second Floor Plan', A1 'Proposed Elevations' and A2 'Proposed First Floor Plan' – all dated

November 16, 2016 – not stamped and with a Board date ‘received’ stamp of November 16, 2016; and

- A hand drawn ‘Unfinished’ Basement Floor Plan – not dated – with a Board date ‘received’ stamp of November 16, 2016.

2. There shall be no more than four one-bedroom apartments allowed on subject property.

3. The professional office space being created (law firm) on the first floor shall be for one tenant only and shall not be sublet to any other business or organization.

4. The applicant shall submit a revised Site Plan for approval by the Board of Appeals, prior to final sign off of the building permit or prior to occupying the structure as a law firm, showing the location of a paved handicap parking space that will be located near the entrance on the north façade of the structure and said space shall be completed in compliance with the State Regulations; and the proposed location of a dumpster at the northeast corner of subject property. The applicant will maintain a screening/buffer of the dumpster so as not to be visible from the roadway.

5. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

6. 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.)

7. This permit shall lapse three 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: 109-16

Applicant: CYNTHIA M. BOURGET-MENDES and MARK L. MENDES  
of West Falmouth, MA

Subject Property: 194 Old Main Road, North Falmouth, Massachusetts  
Map 05A, Section 01, Parcel 007, Lot 002

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

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

\_\_\_\_\_  
Paul Murphy, Acting Clerk of the 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 #109-16 Bourget - Mendes filed w/ Town Clerk 12/9/16