

## Zoning Board of Appeals Decisions Decisions for: 01-07-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 109-15

APPLICANT/OWNER(S): JOHN R. BOWEN of Mashpee, MA

SUBJECT PROPERTY: 29 Circular Avenue, Falmouth, MA  
Assessor's Map: Map 46B, Section 07, Parcel 002, Lot 011

DEED/CERTIFICATE: Book 22069 / Page 148

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of November 12, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 B. of the Code of Falmouth to maintain the two dwelling units in existing structure on subject property known as 29 Circular Avenue, 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 January 7, 2016.
4. The public hearing was terminated on January 7, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed the application and 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

11/12/2015 E-mail correspondence from Judy Willis, previous owner of subject property from 1979 to 2007 – verifying existence of two dwelling units being within the structure on subject property as of time they purchased property [in 1979].

11/12/2015 Letter from Sumner Steinberg of 37 Forest Avenue stating intimate knowledge of existing 'duplex' structure from the mid 50's, noting the existence of four bedrooms – two bedrooms in each unit since the 50's.

1/4/2016 E-mail from Kevin Smith of 15 Quinsigamond Avenue noting that the property has been improved and question on use of lower level.

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

12/15/2015 E-mail from applicant [Mr. Bowen] in response to Board of Health referral. Mr. Bowen notes he has septic pumped on an annual basis.

11/12/2015 Applicant submitted to the file a copy of the real estate listing for subject property from when

he purchased the subject property.

11/12/2015 Applicant submitted to the file, a copy of the P & S Agreement from 2006 when he purchased property.

11/12/2015 Applicant submitted to the file, copies of old Assessors' field cards of subject property [1956].

11/12/2015 Applicant submitted to the file a copy of the approved Variance from the Board of Health signed in 2007 and filed with the Registry of Deeds.

1/7/2016 Applicant submitted to the file photos of subject property [front and rear].

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

11/16/2015 Referral submitted to the file by the Planning Department with no comment.

11/17/2015 Referral submitted to the file by the Fire Rescue Department with no comment.

11/18/2015 Referral submitted to the file by the Building Commissioner Gore with no comment.

12/10/2015 Referral submitted to the file by the Engineering Department [S. Schluter] that states: This application was reviewed only for impacts to public right of ways and public utilities. Circular Avenue is a Public right of way in this area. There is no construction proposed for this application. No further comment.

12/14/2015 Referral submitted to the file by Board of Health Agent Carignan that states: The Health Department recommends slightly more frequent pumping of the septic tank when the use is not single-family residence.

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

11/12/2015 Hand drawn 'Existing Floor Plan' of the two units on subject property.

11/12/2015 "Plan of Land located in Falmouth – Mass." Prepared for John Bowen as drawn by Ferreira Associates, stamped and dated by Richard Ferreira, PLS on January 24, 2007 with a Board date 'received' stamp of November 12, 2015.

#### Hearing:

The Board discussed the history of the structure and information submitted with applicant John Bowen. The Board noted the two letters submitted to the file from individuals who owned and or have been familiar with the property for several years [prior to January 1, 1981]. Mr. Bowen explained how he was able to secure the letters and what he has done to improve the property since purchasing it in 2007. In reviewing the two dwelling units within the structure – he noted both units have two bedroom – totaling four bedrooms on subject property and that the four bedrooms, as noted in the letters submitted, existed as of January 1, 1980.

Member Foreman asked the applicant if he understands that he cannot increase the number of bedrooms in the units, that the tenants cannot have boarders or any home occupation. Mr. Bowen said he does understand.

Member Murphy made a motion to close the hearing. Member Van Keuren 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 29 Circular Avenue in Falmouth contains 3,840 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-23 B. of the Code of Falmouth to maintain the two dwelling units in existing structure on subject property. The existing structure on subject property is nonconforming as it was converted to two dwelling units where only one dwelling unit is allowed on a property. The structure also has nonconforming setbacks to front yard property line of less than the required 25' and both side yard setbacks have less than a 10' setback as required [see Section 240-68 A. and B. of the Code of Falmouth].

Section 240-23 B. of the Code of Falmouth allows a dwelling structure, in a residential zoned district, that existed on a lot as of January 1, 1980, to be converted into up to four dwelling units under certain criteria.

The Board finds that the application for the structure on subject property does meet the criteria of Section 240-23 B. of the Code of Falmouth. The Board further finds that the subject property is not located within a Coastal Pond Overlay District or a Water Resource District [sub-section 2 of code]. Furthermore, the applicant gave testimony that there is no intention of making any material change to the exterior of the existing structure [sub-section 4 of code].

The Board finds that the applicant submitted evidence to the file in forms of old assessors' field cards and two letters that substantiates the structure was in existence on subject property since the 1950's. The Board further finds that the applicant submitted evidence to the file that confirms the existence of four bedrooms within the structure as of January 1, 1980. Furthermore, the Board finds that the application does meet the criteria in sub-sections (1) through (5) of Section 240-23 B. and may be approved by this Board.

In addition to the above findings, the Board finds that the conversion of existing structure into two dwelling units 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 two units as there will be no change in the structure itself and no increase in the number of bedrooms existing.
- B. The site is suitable for the proposed use as the property is zoned residential and is allowed to be converted into up to four units through a special permit pursuant to Section 240-23 B. of the Code of Falmouth.
- 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; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system has been reviewed and referral from the Board of Health submitted to the file.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling conversion 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.

Member Van Keuren made a motion to Grant the Special Permit with conditions. Member Hurrie 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 4 – 0 to Grant the Special Permit to John Bowen (herein referred to as Applicant) under Section(s) 240-23 B. of the Code of Falmouth to allow the existing use to be maintained as two dwelling units in the structure on subject property known as 29 Circular Avenue in Falmouth, MA. This special permit is subject to the following conditions:

1. The floor plan of the structure shall be as represented to the Board and as shown on a hand drawn plan submitted and reviewed by the Board with a Board date 'received' stamp of November 12, 2015.

- 2. The structure and septic system will be maintained the same as shown on the plan submitted to the file entitled: "Plan of Land Located in Falmouth – MASS." Prepared for John Bowen by Ferreira Associates dated January 24, 2007 with a stamp and signature by Richard Ferreira, PLS and a Board date 'received' stamp of November 12, 2015.
- 3. The parking shall remain on subject property off Circular Avenue as shown in the GIS photo submitted to file on January 7, 2016. The gravel parking area appears to accommodate four vehicles.
- 4. There shall be no more than four bedrooms allowed on subject property. Each of the two units shall have no more than two bedrooms.
- 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 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: 109-15

Applicant: JOHN BOWEN of Mashpee, MA

Subject Property: 29 Circular Avenue, Falmouth, MA  
Map 46B, Section 07, Parcel 002, Lot 011

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.

\_\_\_\_\_  
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 109-15 - Filed w/ Town Clerk 1/21/16