

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 006-17

APPLICANT/OWNER: MATTHEW P. DECRISTOFORO of Milton, MA

SUBJECT PROPERTY: 18 Dartmouth Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 27, Parcel 009, Lot 018

DEED/CERTIFICATE: Book 26900 / Page 308

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 23, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to have the Town acknowledge that two (2) separate dwelling units existed prior to May 19, 1959 and enclose existing covered porch at rear of main structure to increase kitchen space within this pre-existing nonconforming single-family dwelling on subject property known as 18 Dartmouth 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 March 16, 2017.
4. The public hearing was terminated on March 16, 2017, 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 with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. Associate Member Gerald Potamis disclosed that he is an abutter and was notified of public hearing; he has no personal contact or knowledge of the applicant; and feels he can sit as an objective member of the Board. The Board members had no concerns or issues with Mr. Potamis participating in the hearing process.
6. The applicant was represented at the hearing by Anthony Maggiore, who reviewed and discussed proposed plans with the Board.
7. 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

- 01/23/2017 Letter from James J. Brennan, DDS dated October 1, 2011 submitted to the file by the applicant. The letter recounts history of the property with two dwellings approximately in 1955.
- 03/01/2017 Letter from Joseph E. LaFreniere, Sr. dated February 27, 2017 submitted to the file. The letter states support of the proposed project and notes that the author summered across the street at 15 Dartmouth Avenue since 1955 and recalls the 'little house' and the main house being used as separate dwellings.

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

- 01/23/2017 Mr. Maggiore submitted the application, fee, letter of authorization and plans for the proposed project, as well as photos of both dwellings on site; and old Assessors' cards noting both structures on site as dwellings dated approximately in 1968 with the age of the structures being approximately 35 years old – it further noted income from guest house.

Letters/Referrals/E-mails from Town Departments

- 02/26/2017 Referral submitted to the file from the Planning Board staff with no comment
- 01/26/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 01/26/2017 Referral submitted to the file from the Director of Assessing noting that the subject property includes Lots 18, 20 and part of 17
- 02/07/2017 Referral submitted to the file from Conservation Commission stating: *Located within flood zone A; control stormwater on property, file administrative review*
- 02/13/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Dartmouth Ave is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways. We reviewed aerial photographs in our office and compared with 2014, 1960 and 1950. It appears there were 2 structures, both of them in the same location in all three aerials. We attached and notated enlarged images.*
- 02/27/2017 E-mail from Amy Lowell, Superintendent of Wastewater responding to question from Zoning Administrator regarding betterments assessed for sewer. Response is 1.5 betterment units due to two dwellings on a lot.

Plans submitted by Applicant/Applicant's Representative

“Plot of Land” prepared for #18 Dartmouth Avenue Falmouth, Massachusetts as drawn by Stephen Doyle and Associates – stamped, signed and dated by Stephen J. Doyle, P.L.S. on 12/20/2016 and a Board date ‘received’ stamp of January 23, 2017;

Hand drawn ‘Existing Floor Plans’ of both Main Dwelling and Cottage (5 pages) and 4 pages of photographs showing all four sides of both dwellings on lot – with a Board date ‘received’ stamp of January 24, 2017; and

“Renovation Design Dichristofaro Residence 20 Dartmouth Ave. Falmouth, MA” drawn by Architecture by SPB consisting of Drawing Number A1 and A2 (proposed floor plan and elevation) – both dated 11/9/2016 and with a Board date ‘received’ stamp of January 23, 2017.

Hearing:

Mr. Maggiore reviewed the existing deck where a portion of said deck will be enclosed to increase the existing kitchen in the main dwelling on subject property. There are no other additions to the structures. There will be no increase to the existing nonconforming lot coverage percentage as the addition will be over a portion of the existing deck. Mr. Maggiore briefly reviewed the information submitted from individuals and old assessors’ cards that give evidence that both dwelling structures existed on subject property prior to May 19, 1959. He explained to the Board that the subject property will be hooked to Town sewer in April of this year. There will be no increase in the number of bedrooms on subject property through this application.

The Board discussed plans with Mr. Maggiore. All concerns and questions were addressed.

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

James Sands, of 22 Dartmouth Avenue, spoke in support of the proposed project.

Member Foreman made a motion to close the hearing. Member Van Keuren 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 18 Dartmouth Avenue in Falmouth contains 7,725 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to allow the Town to acknowledge (240-3 A.) that two dwellings have existed on the property prior to May 19, 1959 without abandonment of use; and to allow an alteration to the main pre-existing nonconforming dwelling (240-3

C.) to enclose a portion of the existing deck to increase kitchen space within the dwelling. The main dwelling on the property has a nonconforming setback to the front property line off Dartmouth Avenue of 6.3' (not including the steps from front porch to grade) that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the cottage structure has a nonconforming setback of 4' to the rear property and 4' to the northerly side yard property line – both require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The property is also nonconforming as this residential zoned lot only allows for a single-family dwelling; the subject property has two dwelling structures. The applicant is applying for Town acknowledgement that both dwellings existed prior to May 19, 1959 on subject property and to allow for an addition that will be to enclose a portion of the existing deck to increase the kitchen space within the dwelling. There will be no increase to the existing nonconformities and no increase to the nonconforming lot coverage by structures through approval of this special permit.

Section 240-3 A. of the Code of Falmouth requires that the use of two or more dwellings on a single lot is deemed a pre-existing nonconforming use if commenced prior to May 19, 1959 and may be altered or modified by special permit provided that the Board of Appeals finds that a preponderance of credible evidence has been provided showing that the use commenced prior to May 19, 1959 and had not been abandoned or unused for a period of two years or more.

The Board finds through submission of a preponderance of credible information to the file by the applicant that the main dwelling and cottage on subject property existed prior to May 19, 1959. The information submitted includes: Two letters as noted above from James Brennan and Joseph LaFreniere, Sr. (both individuals had acknowledgement of two dwellings on subject property prior to 1955 as summer residents and owner of abutting lot); a referral from the Town Engineering Department verifying aerial photos in 1950 that show two structures on subject lot as they exist today; and old Assessors' cards from 1957 (main dwelling) and 1968 (cottage) that notes both structures are approximately 35 years old, which means structures existed approximately 1930's.

Section 240-3 C. 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.

The Board finds that the proposed enclosure of a portion of the rear deck to incorporate into the dwelling to increase the existing kitchen within the main pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the addition to the main dwelling on subject property is minimal and will not increase the existing nonconformities, nor will it create any new nonconformity. Furthermore, the Board finds that the proposed small addition over the existing deck will enhance the utilization of the kitchen area for the residents.

The Board finds that the immediate abutter to the south of subject property was in attendance at the hearing and spoke in support of the proposed project as represented herein.

In addition to the above findings, the Board finds that the proposed minor addition to the main dwelling structure on subject 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 follows:

A. The site is adequate in terms of size for the proposed enclosure of a portion of the existing deck creating a small addition to increase the existing kitchen as it will not increase any existing nonconformity and it will not create any new nonconformity on subject property.

B. The site is suitable for the proposed use as the property is zoned residential and, although only one dwelling is allowed on a residential zoned lot, the applicant submitted a preponderance of credible information that shows both dwellings existing on subject property prior to May 19, 1959 as required in Section 240-3 A. of the Code of Falmouth; and that the existing dwellings does not have an adverse impact on the residential zoned neighborhood.

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 the improvement to the kitchen area is off the rear of the main dwelling and not visible from the roadway.

E. Testimony was that the property will be attached to Town sewer in April of 2017. There was no referral submitted from the Board of Health.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed minor addition to the existing dwelling 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 proposed minor addition to the rear of the main dwelling 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 Foreman made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 the Special Permit** to Matthew P. Decristoforo (herein referred to as Applicant) under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth for acknowledgement by the Town that two dwellings existed prior to May 19, 1959 and to enclose a portion of the rear deck to increase the kitchen within the main dwelling on subject property known as 18 Dartmouth Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The enclosure of a portion of the existing deck on main dwelling structure, all setbacks, lot coverage and use of two dwellings on subject property as found by the Board herein shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- “Plot of Land” prepared for #18 Dartmouth Avenue Falmouth, Massachusetts as drawn by Stephen Doyle and Associates – stamped, signed and dated by Stephen J. Doyle, P.L.S. on 12/20/2016 and with a Board date ‘received’ stamp of January 23, 2017;
 - Hand drawn ‘Existing Floor Plans’ of both Main Dwelling and Cottage (5 pages) and 4 pages of photographs showing all four sides of both dwellings on lot – with a Board date ‘received’ stamp of January 24, 2017; and
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2. 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.
 3. 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.)
 4. 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: **006-17**

Applicant: **Matthew P. Decristoforo of Milton, MA**

Subject Property: **18 Dartmouth Avenue, Falmouth, Massachusetts
Map 46B, Section 27, Parcel 009, Lot 018**

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

RECEIVED

MAR 22 2017

FALMOUTH TOWN CLERK



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.