

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 019-17  
**APPLICANT/OWNER:** JOHN L. DRULEY of Teaticket, Massachusetts  
**SUBJECT PROPERTY:** 63 Davis Straits, Falmouth, Massachusetts  
**Assessor's Map:** Map 39, Section 15, Parcel 035, Lot 000  
**DEED/CERTIFICATE:** Book 30350 / Page 082  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of March 21, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to modify Special Permit #57-04 to create an apartment and a small office on the first floor of existing structure located at 63 Davis Straits, 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 April 27, 2017.
4. The public hearing was terminated on April 27, 2017, wherein the Board consisting of Terrence J. Hurrie as Acting Chairman, Paul Murphy as Acting Clerk, Member Edward Van Keuren and Associate Robert Dugan (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.
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**

None

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

03/21/2017 Applicant submitted an application, fee and four sets of plans for the proposed project discussed herein

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

- 03/22/2017 ZBA staff submitted to the file copies of previous special permits for subject property - #'s 70-88 and 57-04
- 03/23/2017 Referral submitted to the file from Planning Department staff with no comment
- 03/23/2017 Referral submitted to the file from Falmouth Fire Rescue Department in the form of a letter dated March 24, 2017 and signed by Lt. Mel Trott, Fire Prevention Officer. Letter notes that pursuant to Massachusetts Building Code (780 CMR) the structure as proposed with 3 dwelling units will be required to have an automated fire sprinkler system installed.
- 03/28/2017 Referral submitted to the file from Marine & Environmental Services with no comment
- 03/30/2017 Referral submitted to the file from Director of Assessing with no comment
- 04/03/2017 Referral submitted to the file from the Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Davis Straits is a State right of way in this area. Any alterations within the right of way will require permission from MassDOT. 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.*
- 04/03/2017 Referral submitted to the file from Conservation Commission with no comment

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

“Parking Plan” prepared for 63 Davis Straits Falmouth, MA drawn by BSS Design, Inc. dated March 23, 2004 – stamped and signed by Thomas J. Bunker, PLS and with a Board date ‘received’ stamp March 21, 2017;

Four (4) photos of subject structure at 63 Davis Straits – showing each façade of the structure with Board date ‘received’ stamp of March 21, 2017; and

Five (5) pages of hand drawn existing and proposed floor plans with a Board date ‘received’ stamp of March 21, 2017

Hearing:

John Druley, applicant, reviewed the proposed plan to create a two-bedroom apartment and an 8' x 26' small office on the first floor of the existing structure on subject property. Currently there is an existing office space on the first floor and two one-bedroom apartments on the second floor; the two one-bedroom apartments on the second floor will remain as is. He said he understands that he would have to install a fire suppression sprinkler system for the three apartments. The plan submitted shows seven (7) parking spaces on site, which includes one handicap space. Mr. Druley stated that the change from office space to a two-bedroom apartment will decrease the require parking spaces and the existing seven

(7) spaces will be sufficient for proposed uses on site. He further stated that the property is attached to the Town sewer.

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

Chairman Hurrie 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 4 - 0.

Chairman Hurrie 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 63 David Straits in Falmouth contains 10,583 square feet of Business 2 zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to modify previous Special Permit #57-04 to convert existing office space on the first floor into a two-bedroom apartment and an 8' x 26' office space within the existing structure that also has two one-bedroom apartments on the second floor through benefit of previous special permit.

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 change to the pre-existing nonconforming structure is not substantially more detrimental than what currently exists as the change is interior and no additions to the footprint or height of structure. The Board further finds that the proposed apartment and 8' x 26' small office being created does not create any new nonconformity and is in keeping with the general area of this Business 2 zone district along Route 28 (Davis Straits). Furthermore, the conversion from office space to apartment living with a small separate office reduces the net parking space requirement and the existing seven (7) parking spaces on site will be adequate for the two one-bedroom apartments on second floor and the two-bedroom apartment and small office on the first floor.

The Board finds that testimony by the applicant was that he understands the requirement for the structure to be sprinkled according to regulations, and that a fire suppression sprinkler system will be installed. The Board further finds through testimony by the applicant that the structure currently has a Knox Box and existing alarm that is attached to the municipal fire system which will stay intact.

In addition to the above findings, the Board finds that the proposed 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 conversion of office space to a two-bedroom apartment and an 8' x 26' office space on the first floor of the existing structure as there will be no new nonconformity, no increase in the footprint of the structure, no change to the height of the structure and there is adequate parking for the proposed change of use to the first floor.

B. The site is suitable for the proposed use as the property is zoned Business 2 and the general area has structures that contain the same uses as the subject property and will therefore be in keeping with the area.

C. There will be no impact on traffic flow and safety as the conversion of the existing office space into an apartment with a much smaller office will decrease the traffic 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 unchanged and there will be no impact on the neighborhood's visual character as there are other structures in the surrounding area that have been improved such as this; and there will be no impact on any view or vista from the roadway or abutting properties.

E. The subject property is attached to the Town sewer system.

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

G. The proposed change to the interior use of the structure 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 conversion of office space existing on first floor to a two-bedroom apartment with a separate 8' x 26' office space 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 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 **4 – 0 to Grant the Modification to Special Permit #57-04** to John L. Druley (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to allow the creation of a two-bedroom apartment and an 8' x 26' separate office within the first floor of the existing structure on subject property known as 63 Davis Straits, Falmouth, MA. This special permit is subject to the following conditions:

1. The creation of the two-bedroom apartment and 8' x 26' separate office on the first floor of the existing structure, all setbacks, lot coverage, number of bedrooms, parking and use of the structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Parking Plan” prepared for 63 Davis Straits Falmouth, MA drawn by BSS Design, Inc. dated March 23, 2004 – stamped and signed by Thomas J. Bunker, PLS and with a Board date ‘received’ stamp March 21, 2017;

Four (4) photos of subject structure at 63 Davis Straits – showing each façade of the structure and Board date ‘received’ stamp of March 21, 2017; and

Five (5) pages of hand drawn existing and proposed floor plans with a Board date ‘received’ stamp of March 21, 2017

2. The applicant shall meet the requirement of Building Code (CMR 78) and install an automatic fire sprinkler system. Testimony by applicant was that the existing structure does have a Knox Box and the structure has a fire alarm that is currently hooked to the Fire Department.
3. The applicant shall apply to the appropriate Department/Committee for any signage on the property relative to the office use approved herein.
4. 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.
5. 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.)
6. 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:

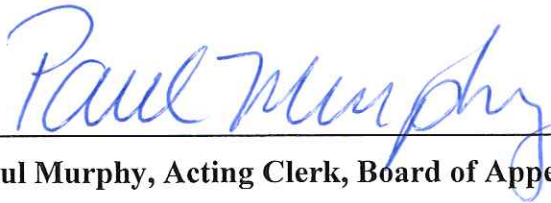
Special Permit Number: **019-17**

Applicant: **JOHN L. DRULEY of Teaticket, MA**

Subject Property: **63 Davis Straits, Falmouth, MA  
Map 39, Section 15, Parcel 035, Lot 000**

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 a modification of a previous special permit (#57-04) as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



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**Paul Murphy, Acting Clerk, Board of Appeals**

**RECEIVED**

**MAY - 5 2017**

**FALMOUTH TOWN CLERK**

*8:10 am*

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**Date Filed With Town Clerk**

*W*

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.