

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 054-17

APPLICANT/OWNER: KATHLEEN M. FLORANCE of North Falmouth, MA

SUBJECT PROPERTY: 248 North Falmouth Highway, North Falmouth, Massachusetts
Assessor's Map: Map 12, Section 05, Parcel 008, Lot 000

DEED/CERTIFICATE: Book 8496 / Page 234

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 23, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 B. and 240-3 C. of the Code of Falmouth to convert the existing single-family dwelling into two (2) dwelling units on subject property known as 248 North Falmouth Highway, 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 10, 2017.
4. The public hearing was terminated on August 10, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Robert H. Ament of Ament Klauer LLP, who 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

See Affidavits listed below submitted by Attorney Ament

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

06/23/2017 Attorney Ament submitted on behalf of the applicant an application, fee, copy of "Plot Plan" a letter from Attorney Ament to Zoning Administrator dated June 23, 2017 regarding subject property, a letter from Attorney Ament to Board of Health Agent dated November

7, 2017 regarding septic (see BOH Agent signature) and a letter of authorization for representation before the Board

- 06/29/2017 Letter from Attorney Ament with attached copies for existing floor plan and proposed floor plan (as requested by ZBA)
- 07/31/2017 Attorney Ament submitted a letter to Zoning Administrator dated July 31, 2017 with three affidavits attached: Affidavit of Edward F. Roskovics; Affidavit of June M. Greene; and Affidavit of Kathleen M. Florance
- 08/10/2017 Attorney Ament submitted several photos of the subject lot and structure (inside and outside photos)

Letters/Referrals/E-mails from Town Departments

- 06/30/2017 Referral submitted to the file from the Board of Health that was revised July 5, 2017 (see file)
- 07/03/2017 Referral submitted to the file from Planning Department staff with no comment
- 07/03/2017 Referral submitted to the file from Historical Commission that states: *Any exterior changes need to come before the Historical Commission*
- 07/05/2017 Letter submitted to the file from the Board of Health (M. Langler) to Attorney Ament dated July 5, 2017 relative to the septic system on subject property and reversal of referral submitted to the Board of Appeals on 06/30/2017 – noting no new system is required for this Special Permit
- 07/05/2017 E-mail from Board of Health Agent (M. Langler) to Zoning Administrator regarding modification of initial referral submitted on 06/30/2017
- 07/06/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/06/2017 Referral submitted to the file from Director of Assessing with no comment
- 07/11/2017 Referral submitted to the file from Town Engineering Department with note that no site work is proposed – no comment.
- 07/18/2017 Referral submitted to the file from Conservation Commission with no comment

Plans submitted by Applicant/Applicant's Representative

“Plot Plan in Falmouth, Massachusetts” prepared for Ament Klauer LLP as drawn by R.A.S. Associates, dated June 20, 2017 – stamped and signed by Stephen W. Cartwright, P.L.S. and with a Board date ‘received’ stamp of June 23, 2017;

“Sketch Floor Plan of dwelling and garage at 248 North Falmouth Highway” prepared by Clancy Appraisal Company dated September 15, 2016 with a Board date ‘received’ stamp of June 23, 2017;

“284 No. Falmouth Hwy. Existing Conditions” – dwelling with speech therapy home occupation (area as existing) with a Board date ‘received’ stamp of June 29, 2017; and

“248 No. Falmouth Hwy. Proposed Layout for 2-Family Dwelling” with a Board date ‘received’ stamp of June 29, 2017.

Hearing:

Attorney Robert Ament reviewed the existing conditions noting that the owner/applicant has operated a speech therapy business as a home occupation since 1993 to present time. He said the dwelling was originally a two-family home when the applicant purchased it and she would now like to restore that wing of the dwelling to a second dwelling pursuant to Section 240-23 B. He noted the lot consists of 21,000 square feet of Residential B zoned land. He reminded the Board that three (3) affidavits were submitted to the file from individuals familiar with the property including Mr. Roskovics who installed a five-bedroom septic system in approximately 1976 for a previous owner (Hastays) who was converting the former antique store in the northeast wing of subject dwelling into an apartment shortly after they purchased the property in 1976. Attorney Ament stated that the applicant will no longer operate a home occupation and there will be no taking of boarders. There are no changes to the exterior of the dwelling planned. Lot coverage is in compliance with Town Code and the nonconforming setback to the southwest property line will remain as existing. There is a detached two-car garage with a work shop, hot tub and storage within it on subject property.

The Board discussed plans with Attorney Ament. All concerns and questions were addressed.

Chairman Foreman 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 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 248 North Falmouth Highway contains 21,198 square feet of Residential B zoned land that is located within the Wild Harbor River Coastal Pond Overlay District and the Historic District. The applicant applied under Section(s) 240-23 B. (to convert into two dwellings) and 240-3 C. (pre-existing nonconforming setback and use) of the Code of Falmouth to convert the existing single-family dwelling into two (2) dwelling units on subject property with no material changes made to exterior of dwelling. The dwelling has a nonconforming setback of 6.5’ to the southwesterly side yard property

line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth.

Section 240-3 C. of the Code of Falmouth (pre-existing nonconforming uses and structures) 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 conversion of the pre-existing nonconforming dwelling into two (2) dwellings will not be substantially more detrimental than what currently exists as the existing nonconforming setback to southwesterly property line will remain as existing and there will be no new nonconforming setbacks created through this special permit. The Board further finds that the proposed use applied for herein as a two-family dwelling will not increase lot coverage from what is existing (see plan submitted to the file) and will remain in compliance with Section 240-69 A. of the Code of Falmouth.

Section 240-23 of the Code of Falmouth – “Special permit uses.” – sub-section B. requires a special permit to convert an existing dwelling into up to four (4) dwelling units with the requirements that there shall be no home occupations or taking of boarders, there shall be no additional bedrooms created above the number that existed in the dwelling on January 1, 1980, that the conversion will not include any material change in the exterior of the dwelling – no increase of floor area as existed on January 1, 1980 and requirement if located in a Coastal Pond Overlay District based on size of lot.

The Board finds that the applicant’s representative submitted clear evidence that the subject dwelling had a total of five (5) bedrooms on subject property as of January 1, 1980 (see affidavits submitted to the file). The Board further finds that the applicant has no intention to change the exterior of the existing dwelling through this special permit approval, with possibly the exception of a required egress based on State Building Code requirements. Furthermore, the Board finds that the plans submitted for the proposed two dwelling units shows no changes in the gross floor area of the existing dwelling structure.

The Board finds that through testimony by the applicant’s representative that the applicant will no longer operate a speech therapy business or any other business from the subject property and that there will be no taking of any boarders by any of the occupants of the two (2) dwelling units approved herein.

In addition to the above findings, the Board finds that the proposed conversion of the single-family dwelling into two (2) 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 proposed conversion as the lot is 21,000+ square feet in size and that there will be two (2) units on subject property as approved herein (Section 240-23 B. (1); and that there is no change in the existing nonconforming setback and no new nonconformities will be created through this special permit approval.

B. The site is suitable for the proposed conversion of single-family dwelling into two (2) dwelling units on this Residential B zoned land as it meets the requirements of Section 240-23 B. and reviewed and approved by the Board of Appeals herein.

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 through this special permit approval.

E. The sewage disposal system is in place and approved for the conversion into a two (2) dwelling unit for a total of five (5) bedrooms on subject property as shown in the plan submitted and verified in a letter and an e-mail submitted to the file from the Board of Health Agent (M. Langer).

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

G. The proposed dwelling conversion into two (2) units as 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 the single-family dwelling into two (2) dwelling units 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 Hurrie 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 the Special Permit** to Kathleen M. Florance (herein referred to as Applicant) under Section(s) 240-23 B. and 240-3 C. of the Code of Falmouth to convert the existing single-family dwelling into two (2) dwelling units on subject property known as 248 North Falmouth Highway, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The conversion of the existing dwelling into two (2) dwelling units, all lot coverage, all setbacks, use of garage structure and use of the two (2) units approved herein shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plot Plan in Falmouth, Massachusetts” prepared for Ament Klauer LLP as drawn by R.A.S. Associates, dated June 20, 2017 – stamped and signed by Stephen W. Cartwright, P.L.S. and with a Board date ‘received’ stamp of June 23, 2017;
 - “Sketch Floor Plan of dwelling and garage at 248 North Falmouth Highway” prepared by Clancy Appraisal Company dated September 15, 2016 with a Board date ‘received’ stamp of June 23, 2017;
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2. There shall be no more than five (5) bedrooms allowed on subject property.
3. There shall be no habitable space created within the detached garage structure on subject property.
4. There shall be no taking of boarders allowed for any occupant within the two dwelling units approved herein.
5. There shall be no Home Occupation conducted on subject property.
6. 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.
7. 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.)
8. 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: **054-17**

Applicant: **KATHLEEN M. FLORANCE of North Falmouth, MA**

Subject Property: **248 North Falmouth Highway, North Falmouth, Massachusetts
Map 12, Section 05, Parcel 008, 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: 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, Vice Chairman, Board of Appeals

RECEIVED

AUG 18 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.