

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 060-17

APPLICANT/OWNER: JOHN H. DRISCOLL, JR., TRUSTEE of the 509 Davisville Nominee Trust of Glastonbury, CT

SUBJECT PROPERTY: 509 Davisville Road, East Falmouth, Massachusetts
Assessor's Map: Map 45, Section 22A, Parcel 011, Lot 000

DEED/CERTIFICATE: Book 29711 / Page 86

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 25, 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 construct dormers, add a screened porch and an addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 509 Davisville Road, East 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 September 14, 2017.
4. The public hearing was terminated on September 14, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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 Kevin P. Klauer II with 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

None

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

08/28/2017 E-mail from Attorney Klauer in response to staff's question regarding basement (response was that currently and proposed there will be no basement)

Letters/Referrals/E-mails from Town Departments

- 07/26/2017 Referral submitted to the file from the Planning Department staff with no comment
- 07/27/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/27/2017 Referral submitted to the file from Conservation Commission that states: *Located within flood zone A: must file Admin Review.*
- 07/28/2017 Referral submitted to the file from Director of Assessing with no comment

Plans submitted by Applicant/Applicant's Representative

“Proposed Addition Plan” as drawn by Cape & Islands Engineering dated June 5, 2017 with a final revised date of 9/6/2017 – plan is stamped, signed and dated by Matthew C. Costa, PLS on 9/6/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“John and Nancy Driscoll 509 Davisville Rd. Falmouth, MA” architectural plans drawn by Longfellow Design Build consisting of Sheet A100 ‘Cover Sheet’, Sheet A101 ‘1st Floor Plan’, Sheet 102 ‘2nd Floor Plan’, Sheet 201 ‘Exterior Elevations’ and Sheet A202 ‘Exterior Elevations’ – all with a date of 9/05/2017 and with a Board date ‘received’ stamp of September 7, 2017; and

“Driscoll Residence Addition & Remodeling” plans drawn by Longfellow Design Build – Sheet 1 of 1 ‘As Built Floor Plans’ (existing floor plans) dated 1/11/2017 and with a Board date ‘received’ stamp of July 25, 2017.

Hearing:

Attorney Klauer reviewed and discussed with the Board, the proposed additions to the pre-existing nonconforming dwelling that was constructed in approximately 1850. He noted that the dwelling is and will remain a two-bedroom dwelling; that the existing height of the dwelling at 21’1” will remain unchanged; and that the one nonconforming setback from the structure to the front yard of 21’4” will remain unchanged as well.

Attorney Klauer agreed with the Board that Note #4 under ‘General Notes’ on the “Proposed Addition” plan drawn by Cape & Island Engineering: *This lot does not lie within the Falmouth high wind district (one mile from shoreline) as shown on the Falmouth High Wind District Map.* The word “not” should be removed from this note.

The Board discussed plans with Attorney Klauer. 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 Hurrie 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 509 Davisville Road in East Falmouth contains 21,638 square feet of Residential B zoned land that is located within the Bournes Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct dormers, add a screened porch and construct an addition to create additional habitable space within the pre-existing nonconforming single-family dwelling on subject property. The only existing nonconformity is a nonconforming setback from the structure to the front property line off Davisville Road of 21.4' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage on subject property is well below the maximum allowed in Section 240-69 A. of the Code of Falmouth. The applicant is proposing to construct a two-story addition to the northerly side (midpoint) of the dwelling extending to the northwest corner where a screened porch is proposed. The proposed addition will create a new dining/family room, bathroom and kitchen area within the dwelling. The existing second story bedroom (#1 bedroom as shown on existing floor plan) is proposed to have a dormer on the north and south side to increase the existing space that will be carried into the second level of the proposed addition that will create a loft area as well that will have access to bedroom (bedroom #1) via a pocket door. The existing plans show a three-bedroom dwelling with one bedroom on the first floor (shown as den on proposed plans) and two bedrooms on the second floor; the proposed plans show the bedroom on the first level being converted into a den and two bedrooms on the second level. According to testimony by the representative, the existing dwelling is a two-bedroom dwelling and will remain a two-bedroom dwelling (existing plans should have labeled bedroom on 1st floor as a den). The applicant's representative stated it isn't a bedroom as it is a pass through to the porch. However, this would be considered a bedroom under CMR Regulations. Lot coverage on subject property will remain in compliance with Section 240-69 A. of the Code of Falmouth through the approval of this special permit.

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.

The Board finds that the proposed additions to the pre-existing nonconforming dwelling are not substantially more detrimental than what currently exists. The Board further finds that the proposed additions do not increase the existing nonconforming setback of the structure to the front property line and will not create any new nonconformities on subject property. Furthermore, the Board finds that the additions will be an improvement to the utilization of the dwelling by its residents.

The Board finds through testimony by the applicant's representative that the existing dwelling is a two-bedroom dwelling and will remain a two-bedroom dwelling through this special permit approval as the 'proposed' plans that have been submitted and reviewed by the Board show. The Board further finds that although the existing floor plans show three bedrooms, testimony was that there are only two bedrooms existing and two bedrooms proposed; therefore the subject dwelling before the Board is

considered a two-bedroom dwelling and will remain a two-bedroom dwelling through this special permit.

The Board finds that the proposed additions will not increase the existing 21'1" height of the subject dwelling and said dwelling will remain same height.

The Board finds that the lot coverage on subject property will remain well below the maximum percentage allowed pursuant to Section 240-69 A. of the Code of Falmouth.

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 addition(s) as the additions will not increase the existing nonconforming setback, it will not create any new nonconforming setbacks and the lot coverage will remain in compliance with Town Code.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single-family residence through this special permit approval.

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 slightly changed as the proposed additions are primarily at the rear of the dwelling and will not have 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. The sewage disposal system will be reviewed by the Board of Health prior to the issuance of a building permit. Note: The Board did not receive a referral from the Board of Health to comment on allowable number of bedrooms on subject property, however, the plan shows no increase in the number of bedrooms over the existing two as confirmed by applicant's representative (the bedroom shown on the first floor of the 'existing' floor plan was considered a den).

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water service as the Board of Appeals did not receive a referral regarding any possible updated of water service line.

G. The proposed additions to the 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 additions to the pre-existing nonconforming single-family dwelling 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 Bielan 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 John H. Driscoll, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct dormers, add a screened porch and an addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 509 Davisville Road, East Falmouth, MA. This special permit shall be subject to the following conditions:

1. The addition of dormers, screened porch and addition, all setbacks, lot coverage, height of structure and use as a two-bedroom structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Proposed Addition Plan” as drawn by Cape & Islands Engineering dated June 5, 2017 with a final revised date of 9/6/2017 – plan is stamped, signed and dated by Matthew C. Costa, PLS on 9/6/2017 and with a Board date ‘received’ stamp of September 7, 2017; and
 - “John and Nancy Driscoll 509 Davisville Rd. Falmouth, MA” architectural plans drawn by Longfellow Design Build consisting of Sheet A100 ‘Cover Sheet’, Sheet A101 ‘1st Floor Plan’, Sheet 102 ‘2nd Floor Plan’, Sheet 201 ‘Exterior Elevations’ and Sheet A202 ‘Exterior Elevations’ – all with a date of 9/05/2017 and with a Board date ‘received’ stamp of September 7, 2017.
2. There shall be no more than two (2) bedrooms allowed on subject property.
3. 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.
4. The Applicant shall meet the requirements of the DPW Water Division.
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 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:

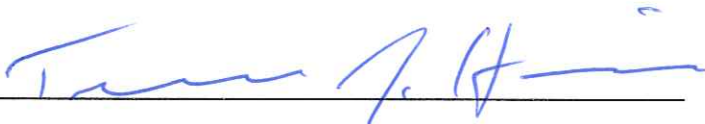
Special Permit Number: **060-17**

Applicant: **John H. Driscoll, Jr., Trustee of the 509 Davisville Nominee Trust**

Subject Property: **509 Davisville Road, East Falmouth, MA
Map 45, Section 22A, Parcel 011, 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

SEP 21 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.