

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 074-17

**APPLICANT/OWNER:** JAMES V. BARRILE & LESLEY E. BARRILE of Marlborough, MA

**SUBJECT PROPERTY:** 25 Worcester Court, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B Section 21 Parcel 006 Lot 023

**DEED/CERTIFICATE:** Book 30313 / Page 135

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of August 23, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze the pre-existing nonconforming two-family dwelling and construct a single-family dwelling that exceeds the 20% lot coverage by structures on subject property known as 25 Worcester Court, Falmouth, Massachusetts.
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 October 19, 2017.
4. The public hearing was closed on October 19, 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 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**

09/19/2017 Attorney Ament submitted to the file five (5) letters of support signed by: John Farrell of 21 Worcester Court; Elizabeth J. Fairweather of 18 Worcester Court; James Fairweather of 18 Worcester Court; Louis Seligowski of 17 Worcester Ct; and Richard Zenga of 16 Montgomery Court

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

08/23/2017 Attorney Ament submitted an application, letter of authorization, fee, site and architectural plans, 'Metrics for Houses Within 300', and a narrative letter regarding proposed project

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

- 08/28/2017 Referral submitted to the file from Director of Assessing notes: *Includes Lots 23 & 25*
- 08/29/2017 Referral submitted to the file from Planning Department staff with no comment
- 08/31/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 09/06/2017 Referral submitted to the file from Conservation Commission that states: *No filing Received yet: Needs RDA that shows 1) First Floor Elevation is at least 1 foot above base flood elevation and 2) stormwater contained on property w/roof gutters to drywells and trench drain in driveway*

Note: Referrals sent by ZBA to Assessors, Building Department, Conservation Commission, Engineering Department, Fire Department, Planning, Board of Selectmen and Water Department

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

“The Barrile Residence 25 Worcester Court Falmouth, MA” as drawn by Giampietro Architects – Drawing AB1 ‘As-Built Survey Notes’ dated January 22, 2016 and with a Board date ‘received’ stamp of August 23, 2017;

“Plot Plan – Existing House” prepared for James Barrile 25 Worcester Court Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated January 31, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date ‘received’ stamp of August 23, 2017;

“Plot Plan – Proposed House” prepared for James Barrile 25 Worcester Court Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated August 18, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date ‘received’ stamp of August 23, 2017; and

“The Barille Residence 25 Worcester Court Falmouth, MA” plans drawn by Giampietro Architects consisting of Sheet No. A2 ‘Floor Plans’ dated 6/22/2017 and Sheet No. A1 ‘Elevations’ dated 6/26/2017 – both Sheets have a Board date ‘received’ stamp of August 23, 2017.

#### Hearing:

Attorney Ament reviewed the pre-existing nonconforming two-story, two-family dwelling structure that has three (3) bedrooms (circa 1930) on a 7,200 square foot subject property that has a nonconforming setback of 11’5” to the front property line off Worcester Court – all other setbacks and lot coverage are in compliance with the Code of Falmouth. The applicant is proposing to raze the two-family structure and construct a one-family dwelling, eliminating the nonconformity of a two-family dwelling. The property is located in Flood Zone AE13 so the new dwelling will be brought into compliance with flood plain requirements and have the first floor elevation at 14’ as required. The proposed dwelling will have four (4) bedrooms, an attached garage, the dwelling will have a height of 31’9.5” and the nonconforming setback to the front property line will be improved from 11’5” to 12’8”. The applicant applied under Section 240-69 E. of the Code of Falmouth to allow the lot coverage by structures to be increased from 14.16% to 24.68%. Attorney Ament reviewed the calculation sheet submitted to the file that shows 36 properties in the general vicinity – 22 of the properties have at least one and three-quarter to two-story dwellings and 14 dwellings have 1.5 or less stories and the proposed ranks 13 out of 36 in gross floor area.

The Board discussed possible shed, stormwater runoff and lot coverage with Attorney Ament.

Attorney Ament stated there is no shed proposed and suggested administrative approval in the event of one, however, there is no room for one based on proposed lot coverage.

Thomas Bunker, P.L.S. with BSS Design, Inc. addressed the stormwater runoff noting proposed drywells and stated that there will be additional drywells added where downspouts will be located to capture runoff.

Attorney Ament, in response to Board comment on lot coverage almost at 25% maximum and slight improvement to front yard setback, noted that the proposed dwelling is moving further (approximately 8') away from closest abutter.

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 25 Worcester Court in Falmouth contains 7,505 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze the pre-existing nonconforming two-family structure and to construct a single-family dwelling on subject property. The existing two-family dwelling structure is nonconforming as zoning allows only a single-family dwelling in a residential zone. The existing dwelling is circa 1930, and is a two-story dwelling that has a total of three (3) bedrooms. Note: Email via Attorney Ament from Russ Crockford states height of existing structure is approximately 23'. The proposed will be a two-story, four-bedroom, single-family dwelling with an attached garage and a height of 31'9.5". Testimony by the applicant's representative was that the proposed dwelling will be hooked to Town sewer (currently not attached).

The Board finds that Attorney Ament stated at the hearing that the subject property is 7,200 square feet in size. However, the stamped 'Plot Plan' submitted to the file shows the property to be 7,505 square feet in size.

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 single-family dwelling will eliminate the existing nonconforming two-family dwelling on subject property. The Board further finds that the proposed reconstructed single-family dwelling will slightly improve the nonconforming front yard setback of 11'5" to 12'8". Furthermore, the Board finds that the proposed single-family dwelling will meet FEMA regulations with a first floor elevation of 14'.

The Board finds that the proposed raze and reconstruction represented herein will not be substantially more detrimental than what exists on subject property based on calculations of thirty-six (36) properties within a three hundred foot (300') radius as submitted to the file by the applicant's representative; and the elimination of two existing nonconformities. The Board further finds that the proposed dwelling ranks 13 out of the 36 shown on the

calculations of properties within said three hundred foot (300') radius, which appears to be in keeping with the neighborhood area.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to grant a special permit for a property to exceed the 20% maximum lot coverage by structures (Section 240-69 A.) after consideration by the Board of the size and height of proposed structure in comparison to those in the neighborhood, any shadowing on adjacent properties by the proposed structure, any impact on a view or vista from a roadway or any effect of nitrogen on a coastal embayment.

The Board finds that although the structure is doubled in size, according to the calculations submitted showing thirty-six (36) properties within three hundred feet (300') of subject property, the proposed structure is in keeping with the neighborhood character relative to size and height; that there will be no shadowing on adjacent properties as the applicant moved the proposed dwelling further away from the closest abutting structure than what previously existed; that there is no impact on a view or vista from a roadway based on the location of subject property; and there is no effect on a coastal embayment due to the proximity of subject property to a coastal embayment and also that the property will be served by Town sewer. The Board further finds, based on consideration of criteria as stated, the application is approvable for the proposed lot coverage of 24.68%.

The Board finds that the Conservation Commission issued a 'Determination of Applicability' on 9/27/2017 for the proposed project – a copy of said Determination was submitted to the file. The Board further finds that the applicant's representative stated that there will be additional drywells located on subject property where downspouts will be installed to contain roof runoff.

The Board finds through testimony by the applicant's representative that there is no intent to locate or place a shed or accessory structure on subject property.

In addition to the above findings, the Board finds that the proposed construction of a single-family dwelling on subject property 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 single-family dwelling as it appears to be in keeping with the size and height of other dwellings in the general vicinity of subject property; that the nonconforming setback to front property line will be slightly improved; and that the increase in lot coverage is in keeping with the criteria of Section 240-69 E. of the Code of Falmouth as determined by this Board.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed will eliminate a two-family dwelling and construct in its place a single-family dwelling.

C. There will be no impact on traffic flow and safety as there will be one driveway accessing this property and relocation of the proposed driveway will require a permit and approval from the Town Engineering Department. There will be one additional bedroom added to the subject property with minimal impact to the neighborhood traffic flow.

D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The subject property will be served by the Town sewer. Hookup to the Town sewer and removal of existing sewage system shall be required prior to final inspection sign off by the Building Department.

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 system as the Board did not receive a referral from the Water Department regarding any upgrade to the existing water service.

G. The proposed dwelling reconstruction 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 removal of a two-family dwelling structure and construction of a single-family dwelling structure at 25 Worcester Court 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 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 James V. Barrile and Lesley E. Barrile (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze the pre-existing nonconforming two-family dwelling structure and construct a single-family dwelling structure on subject property known as 25 Worcester Court, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of the two-family structure, construction of the single-family dwelling, all setbacks, height of dwelling, lot coverage and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Plot Plan – Existing House” prepared for James Barrile 25 Worcester Court Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated January 31, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date ‘received’ stamp of August 23, 2017;
  - “Plot Plan – Proposed House” prepared for James Barrile 25 Worcester Court Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated August 18, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date ‘received’ stamp of August 23, 2017; and
  - “The Barille Residence 25 Worcester Court Falmouth, MA” plans drawn by Giampietro Architects consisting of Sheet No. A2 ‘Floor Plans’ dated 6/22/2017 and Sheet No. A1 ‘Elevations’ dated 6/26/2017 – both Sheets have a Board date ‘received’ stamp of August 23, 2017.
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no shed or other accessory structure located on subject property.
4. Lot coverage by structures shall not exceed the proposed 24.68% as shown on the plan noted in Condition 1 above.
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. The Applicant shall meet the requirements of the DPW Water Division.
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:

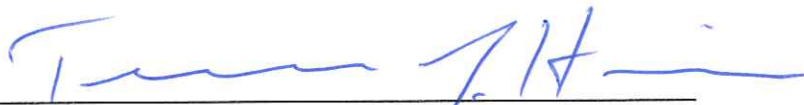
Special Permit Number: **074-17**

Applicant: **JAMES V. BARRILE & LESLEY E. BARRILE of Marlborough, MA**

Subject Property: **25 Worcester Court, Falmouth, Massachusetts  
Map 46B Section 21 Parcel 006 Lot 023**

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

OCT 27 2017

FALMOUTH TOWN CLERK

*APC @ 11:35am*

**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.