

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 088-17

**APPLICANT/OWNER:** JODI LANE & ROBERT PAUL MCGOWAN, TRUSTEES of the Cape Escape Realty Trust of Upton, MA

**SUBJECT PROPERTY:** 1 Iroquois Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 39A Section 23 Parcel 000 Lot 027

**DEED/CERTIFICATE:** Certificate 193369 – Lot 27 Plan 21316-C

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of October 3, 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 an addition to the 2<sup>nd</sup> floor creating additional habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 1 Iroquois Street, Teaticket, 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 November 30, 2017.
4. The public hearing was closed on November 30, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Robert Dugan, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. The applicant's representative signed a waiver to extend the sixty-five day hearing process (see file). 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, 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)**

None

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

- 10/03/2017 Staff submitted to the file a copy of an email transmission to the applicant's representative regarding basement and its use; and height of existing dwelling. Note: the question on the basement was not answered; the height was addressed.
- 10/04/2017 Referral submitted to the file by the Planning Department staff with no comment
- 10/11/2017 Referral submitted to the file from Director of Assessing with no comment
- 10/12/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/12/2017 Staff submitted to the file a copy of an Administrative Approval for subject property
- 11/06/2017 Referral submitted to the file from Town Engineering Department with standard comments
- 11/07/2017 Referral submitted to the file from Conservation Commission that states: *No filings received. Must file Notice of Intent due to proximity to wetland (25-30 ft.). Also within flood zone AE12 – does this trigger requirement to meet flood zone standards? Drywells to contain roof runoff.*
- 11/21/2017 Staff submitted to the file photos of dwellings in the general neighborhood as comparison to what is proposed on subject property

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

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

“Existing Site Conditions Plan 1 Iroquois Street in Teaticket (Falmouth), Massachusetts prepared for Jodi & Robert McGowan, Trustees Cape Escape Realty Trust 4 Pierce Lane Upton, MA 01568 as drawn by Cape & Islands Engineering dated September 12, 2017 – plan is stamped and signed by Matthew C. Costa, P.L.S. and has a Board date ‘received’ stamp of October 3, 2017; and

“McGowan 1 Iroquois Street Falmouth, MA” plans drawn by Longfellow Design-Build consisting of – Drawing P2 A0.1 ‘Demo Plans’, Drawing P2 A1.0 ‘First Floor Plan’ (rooms not designated), Drawing P2 A1.1 ‘Second Floor Plan’ and Drawing P2 A2.0 ‘Exterior Elevations’ – all plans dated 2/17/2017 and with a Board date ‘received’ stamp of October 3, 2017.

Hearing:

Attorney Klauer reviewed the proposed plans regarding build out of the second floor – currently a ½ floor going to a full second floor. He reviewed the existing nonconformities on subject property that

consist of nonconforming setbacks front property lines and side property line, as well as the lot coverage by structures at 33.7%. He explained that the property will be hooked to the Town sewer and the existing septic system will be removed; and the proposed plan will increase the bedroom count from three (3) existing to four (4) proposed. The height of the dwelling will not be increased.

The Board discussed plans and concerns with Attorney Klauer. All concerns and questions were addressed, including testimony from Attorney Klauer that the applicant is amenable to installing drywells on subject property as needed.

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 1 Iroquois Street in Teaticket contains 4,860 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 C of the Code of Falmouth to construct an addition to the existing second floor of the dwelling – making the dwelling a full two-story structure. The existing nonconforming setback of 20.5' from the front property line off Iroquois Street and 9.4' off Little Bay Road that requires a 25' setback under Section 240-68 A. of the Code of Falmouth and a 9.9' setback from the southerly property line that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 33.7% - 20% maximum allowed by right, and total lot coverage by structures, parking and paving is nonconforming at 40.4% - 40% maximum allowed by right – both pursuant to Section 240-69 A. of the Code of Falmouth. The proposed plan will not increase any of the nonconforming setbacks or lot coverages as it is an addition to the existing second floor of the dwelling on subject property.

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 addition to the second floor of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists as it does not increase any existing nonconformities, it will create any new nonconformity on subject property and the nonconforming lot coverage will remain as is. The Board further finds that the subject property is being hooked to the Town sewer and this is one house out of many in the general area that will be making a change to create a fourth bedroom (subject property going from three (3) bedrooms to four (4) bedrooms) that is allowed when a property is attached to the Town sewer in this district. Furthermore,

the Board finds that the proposed plans will increase the utilization and functionality of the dwelling for the residents of subject property.

The Board finds that according to testimony by the applicant's representative (Attorney Klauer), the applicant would be amenable to installing drywells on subject property with location identified as necessary by the project engineer's. The Board further finds that the subject property is currently serviced by a septic system and will be hooking to the Town sewer in the future. Furthermore, the Board finds that the proposed fourth bedroom noted herein cannot be occupied until such time that the subject property is attached to the Town sewer.

The Board finds that testimony by the applicant's representative was that application for an RDA was filed with the Conservation Commission and the project engineer is working with Conservation on this application.

The Board finds that Little Bay Road along the westerly property line of subject property is a paper road.

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 as there will be no increase in the existing nonconforming setbacks and lot coverage and there will be no new nonconformities created on subject property through this approval.

B. The site is suitable for the proposed use as the property is zoned residential and will be continued to be maintained and used as a single-family dwelling according to testimony herein and plans submitted and approved.

C. There will be no adverse impact on traffic flow and safety due to the one (1) bedroom addition through the proposed plans and there is no change in the location of the existing driveway on site.

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 existing sewage disposal system will be removed and the subject property will be connected to the Town sewer.

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 did not receive a referral commenting on the water service for this application.

G. The proposed dwelling addition 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 addition to the existing second floor of the 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Hurrie 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 a Special Permit** to Jodi Lane and Robert Paul McGowan (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the second floor of the pre-existing nonconforming single-family dwelling on subject property known a 1 Iroquois Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The addition to the second floor, all setbacks, lot coverage, height of structure and use of structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Existing Site Conditions Plan 1 Iroquois Street in Teaticket (Falmouth), Massachusetts prepared for Jodi & Robert McGowan, Trustees Cape Escape Realty Trust 4 Pierce Lane Upton, MA 01568 as drawn by Cape & Islands Engineering dated September 12, 2017 – plan is stamped and signed by Matthew C. Costa, P.L.S. and has a Board date ‘received’ stamp of October 3, 2017; and
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2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no occupancy or use of the fourth bedroom within the dwelling until such time that the subject property is attached to the Town sewer. The applicant must submit verification to the Board of Appeals that the property has been attached to the Town sewer prior to final inspection of this projection by the Building Department.
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. The Applicant shall meet the requirements of the DPW Water Division.

6. 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.)
7. This permit shall lapse three (3) 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:       **088-17**

Applicant:                   **JODI LANE & ROBERT PAUL MCGOWAN, TRUSTEES of the Cape  
Escape Realty Trust of Upton, MA**

Subject Property:           **1 Iroquois Street, Teaticket, Massachusetts  
Map 39A Section 23 Parcel 000 Lot 027**

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**

**DEC - 8 2017**

FALMOUTH TOWN CLERK

*[Handwritten signature]*  
**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.