

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 004-18  
**APPLICANTS/OWNERS:** THOMAS L. MESSER and MARYSIA F. MESSER of Hatchville, MA  
**SUBJECT PROPERTY:** 190 Goeletta Drive, Hatchville, Massachusetts  
**Assessor's Map:** Map 11 Section 02 Parcel 007 Lot 171  
**DEED/CERTIFICATE:** Book 23550 / Page 0304  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of January 8, 2018, the applicants applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 I. of the Code of Falmouth to allow a detached accessory apartment on subject property known as 190 Goeletta Drive, Hatchville, 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 March 1, 2018.
4. The public hearing was closed on April 5, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions (note: Member Bielan and Gerald Potamis were both absent for one hearing – quorum was four members). Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicants were present at all the hearings held for this application 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**

- 03/02/2018 Letter submitted to the file from abutter Robert Leary dated March 1, 2018 citing bylaw and concerns regarding proposed accessory apartment
- 03/05/2018 Applicants submitted to the file copies of four (4) letters regarding the proposed accessory apartment as follows:

- Letter from Megan Amsler of 41 Wellington Way in Hatchville stating support with concerns regarding setback of the proposed apartment to her property which is a working farm;
- Form letter by Bob and Susan Groman (both signed letter) of 36 Raspberry Path signing in support of proposed apartment;
- Form letter by Susan Natali of 191 Goeletta Drive signing in support of proposed apartment; and
- Form letter by Richard Zuck and Mary Grauerholz (both signed) of 30 Raspberry Path

- 03/09/2018 Letter submitted to the file from Vivian Esswein-Leary – not dated – of 196 Goeletta Drive stating concerns on impacts to their property from proposed accessory apartment
- 03/12/2018 Letter submitted to the file from Vivian Esswein-Leary (not dated) regarding concerns and request for request for catch basins/drywells
- 03/12/2018 Letter submitted to the file from Robert Leary dated March 11, 2018 to the Board of Appeals outlining the bylaw for an accessory apartment and review of Planning Board process and hearings for this subject property
- 03/12/2018 Letter submitted to the file from Megan Amsler dated March 11, 2018 to the Board of Appeals stating support of the project with concerns of its setback to her property
- 03/14/2018 Email from Baron E. Duffy of 181 Goeletta Drive to the Board of Appeals stating concerns – he attached a letter and bylaw section(s) review
- 03/15/2018 Email letter from Christine Duffy of 181 Goeletta Drive to the Board of Appeals stating concerns relative to parking, private road and summer rental
- 03/15/2018 Email from Baron Duffy correcting the bylaw section(s) review he sent on 3/14/2018
- 03/28/2018 Letter from Vivian Esswein-Leary dated March 28, 2018 submitted to the file stating concerns and with attached photos of subject property

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

- 01/08/2018 Applicants submitted a ‘Square Footage Worksheet’ to the file showing existing and proposed square footage of dwelling and accessory apartment
- 03/02/2018 Email submitted to the file from applicants to Zoning Administrator Budrow regarding proposed revisions to plans for accessory apartment – applicant attached responses to five (5) concerns stated by abutter Leary

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

- 01/12/2018 Referral submitted to the file from the Planning Department staff with no comment

- 01/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 01/18/2018 Referral submitted to the file from Director of Assessing with no comment
- 02/12/2018 ZBA staff submitted a copy of a letter dated February 8, 2018 from applicants regarding the process for approval of a proposed accessory apartment
- 02/16/2018 A copy of letter dated February 13, 2018 from the Board of Health to the Planning Board sent by David Carignan, Board of Health agent, regarding subject property and proposed accessory apartment
- 02/26/2018 A memo from Corey Pacheco, Assistant Town Planner dated February 26, 2018 to Sari Budrow, Zoning Administrator was submitted to the file. The memo states concerns from the Planning Board.
- 03/30/2018 ZBA staff requested from the Planning Board its Decision for Site Plan Review dated March 29, 2018 and submitted it to the file for Board's Review

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 Plan – Messer” hand drawn existing floor plans of existing dwelling on subject property – drawn by applicant consisting of three (3) pages all with a Board date ‘received’ stamp of January 8, 2018;

“Messer Guest House” – computer generated showing upper and lower floor plan with a Board date ‘received’ stamp of January 8, 2018;

“Messer Residence” – Elevation Plans created by Noble Home – Drawing A3 dated March 21, 2018 and with a Board date ‘received’ stamp of March 29, 2018 (these plans are revised from previous plans based on Site Plan Review);

“Plot Plan” with Topography Showing Proposed Building for #190 Goeletta Drive Hatchville Falmouth, MA dated 10/28/2001 as drawn by Warwick & Associates Inc. with a revised date of 9/12/2017 – plan is date, stamped and signed by Gary S. Labrie, PLS on 3/22/2018 and stamped and signed by Jack Landers-Cauley, PE – plan also has a Board date ‘received’ stamp of April 2, 2018; and

“Site & Septic Design Plan” as drawn by Warwick & Associates Inc. dated 12/28/2017 – plan is not stamped and signed by PE – plan has a Board date ‘received’ stamp of April 2, 2018.

Hearing March 1, 2018:

Tom and Marysia Messer, applicants, stated they are going through the process to get approval for a detached accessory apartment. They reviewed the plans they submitted to the Planning Board under Site Plan Review and Design Standards according to the bylaw. They explained they have a four-bedroom dwelling on the property and one bedroom will be removed and relocated in the detached accessory structure to be used as an apartment. They reviewed the requests by the Planning Board to relocate the accessory structure closer to the dwelling and to look into put on faux garage doors so as to maintain the look of an accessory structure. They explained to the Board that they are returning to the Planning Board with revised plans.

The Board discussed plans with the applicants (Mr./Mrs. Messer) and stated concerns regarding basement area, proposed bathroom in basement, carport, location and size of structure to fit in as an accessory to the primary.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project.

Scott Bennet, applicant's son-in-law, stated he has heard talk of elderly being able to age in place as well as young people not being able to afford living here and he is hopeful those key points will not be overlooked in the special permit process.

Attorney Kevin Klauer (not representing applicant), stated that the Board should be looking at the intent of the bylaw noting that fake garage doors seem foolish to have to put on as requested by the Planning Board.

The Board discussed and noted that the hearing will be continued until said time that the Planning Board's Site Plan Review is complete.

Member Van Keuren made a motion to continue the hearing to March 15, 2018 at 6:00 PM. Member Murphy seconded the motion. Motion carried 5 – 0.

Hearing – March 15, 2018 (Member Bielan absent, Alternate Gerald Potamis sitting as voting member):

Mr. and Mrs. Messer reviewed the changes that they made to the accessory structure noting that the structure will have cedar shingles with hunter green trim work, same as existing dwelling and that the roof will match existing dwelling as well. They removed the carport, moved the structure closer to the existing house and rotated said structure so that the side of the structure will face the driveway. They reviewed the proposed driveway so that four (4) cars can park on the property and added barn doors to the accessory structure to fulfill the Planning Board's recommendations. The applicants explained they are trying to make abutters and Planning Board happy and are willing to make changes.

Chairman Hurrie asked for public comment in opposition or support of the proposed project.

Robert Leary of 196 Goeletta Drive spoke on the application as a neighbor (not as a Planning Board member – he noted he recused from Planning Board's meetings). He stated they are in favor of the

project and just want to make sure the bylaw is followed. Mr. Leary reviewed aspects of the bylaw that he feels the Board needs to be mindful of.

Holly Wilson, Chair of Affordable Housing Committee, stated she want to give credit to the first people to be reviewed under the new bylaw for a detached accessory apartment and she believes this is the prime reason the bylaw was created – to help people be able to age in place and subsidize their income by renting an accessory apartment or living in the accessory apartment and renting the main dwelling.

It was noted that the Planning Board had to delay a hearing due to weather and that a Site Plan Review Decision has not been made yet. Due to this delay, this Board will continue the hearing until after Planning Board's scheduled hearing.

Member Van Keuren made a motion to continue this hearing to April 5, 2018 at 6:30 PM. Member Potamis seconded the motion. Motion carried 5 – 0.

Hearing – April 5, 2018 (Member Potamis absent – quorum is now four members):

Chairman Hurrie noted that the Board of Appeals has received the Site Plan Review Decision by the Planning Board and asked the Board members if they had any questions. Question regarding the bathroom proposed in the unfinished basement area below the proposed accessory apartment.

Tom Messer stated that the Planning Board decided not to allow the bathroom in the basement and we would like to ask this Board's permission to have one. He explained that the one bathroom in the apartment will be small and we would like to have an accessible bathroom in the basement for use by grandchildren when visiting and a place to be able to wash the dogs so as not to have everyone go through the apartment that they plan to reside in.

Zoning Administrator stated that a bathroom and laundry room are not considered habitable spaces.

Chairman Hurrie asked the applicants to clarify for the record that the basement area of the accessory structure proposed herein will be unfinished and if they will be amenable to a Deed Restriction stating as such.

Mr. Messer stated they would be amenable to a deed restriction.

Member Murphy made a motion to close the hearing. Member Van Keuren 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 190 Goeletta Drive in Hatchville contains 33,291 square feet of Agricultural A zoned land that is located in a State Zone II Overlay and the Water Resource Protection

Overlay District. The applicant applied under Section(s) 240-38 I. of the Code of Falmouth to allow a detached accessory apartment on subject property. This subject property is located within the Zone II Overlay that allows for new construction to have one (1) bedroom per 10,000 square feet of land. However, the existing four-bedroom dwelling on subject property was constructed approximately in 1986 prior to the Zone II regulation by Department of Environmental Protection (DEP) and therefore may maintain the existing four bedrooms on subject property. The applicants are proposing to eliminate one (1) bedroom located on the first floor of the main dwelling by removing a wall and adding the space into existing living room area and essentially relocating that bedroom into the accessory apartment and maintain a total of four (4) bedrooms on subject property as existing.

Section 240-38 I. of the Code of Falmouth allows the Board of Appeals to approve a special permit for a detached accessory apartment as long as it remains accessory to a primary dwelling and meets compliance of subsections 1. through 7. of said bylaw. This bylaw was amended by Town Meeting vote in April of 2017 (and approved by the Attorney General in June of 2017) as a by-right for accessory apartments attached to or created within a single-family dwelling after review by Planning Board for Site Plan Review; and requires a Special Permit by the Board of Appeals for a detached accessory structure, after review by the Planning Board for site Plan Review.

The Board finds that the proposed detached accessory apartment structure on subject property appears to be in compliance with Section 240-38 I. of the Code of Falmouth as the square footage of floor area within the accessory apartment is below 800 square feet in size; that the square footage of floor area within the accessory apartment is less than 40% of the floor area within the main dwelling on subject property; and that the applicant's testified that they will be residing on the property seven (7) months out of each year. The Board further finds that the application has gone before the Planning Board as required in Section 240-38 I. (5) (b) of the Code of Falmouth and that a copy of the Planning Board's Decision has been submitted to the file and reviewed by this Board and taken into consideration for this approval of a special permit. Furthermore, the Board finds that the detached accessory structure is in compliance with height regulation under Section 240-70 of the Code of Falmouth; the setbacks of the proposed accessory structure are in compliance with Sections 240-68 A. and B. of the Code of Falmouth; and the lot coverage on subject property through the addition of the proposed detached accessory structure is in compliance with Section 240-69 A. of the Code of Falmouth.

The Board finds through submission of existing floor plans and by testimony from the applicants that there are four (4) existing bedrooms within the existing dwelling and there will be four (4) bedrooms remaining on subject property in total through this special permit approval (one bedroom in the dwelling will be relocated to the accessory apartment – see plans submitted). The Board further finds through testimony by the applicants that the basement proposed below the accessory apartment will remain unfinished so as not to become usable floor area for the proposed accessory apartment; and that the applicants are amenable to filing a Deed Restriction with the Barnstable County Registry of Deeds regarding that said basement area below the accessory apartment will remain unfinished space. Furthermore, the Board finds that the proposed bathroom and laundry facilities within the basement area constitutes non-habitable space and will be allowed through this special permit. The Board understands that although the Planning Board conditioned in #4 of its decision that there shall not be a bathroom allowed in the basement, a full bathroom complete with a tub is not habitable space and does not add to the floor area of the accessory apartment.

The Board finds that the Deed Restriction that the applicants are amenable to filing shall contain language that the basement within the detached accessory structure – below the accessory apartment – shall never be finished space and shall not be used for sleeping accommodations.

The Board finds through testimony by the applicant that they are amenable to add screening at the southwesterly corner of their property so as to better buffer the proposed accessory structure from the abutters who stated concern in letters submitted and at the hearing.

In addition to the above findings, the Board finds that the proposed detached accessory apartment 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 detached accessory apartment in so much as it is in compliance with all dimensional regulations as stated above and is in substantial compliance with the 2017 amended bylaw under Section 240-38 I. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single-family residence with the approval of this accessory apartment to the primary dwelling use.

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. However, the driveway on subject property has been improved so that there will be no on-street parking by the residents of subject property.

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 the subject property is buffered by native vegetation that is existing; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system will be required to be approved by the Board of Health prior to issuance of a building permit.

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

G. The proposed detached accessory apartment discussed and represented herein will have no effect on the supply of affordable housing inventory for the Town of Falmouth, however it does meet the intent in sub-section (1) "Purpose" of Section 240-38 I. "Accessory Apartments" of the Code of Falmouth .

H. There was Site Plan Review as required by the Planning Board for this detached accessory apartment on subject property and the Board of Appeals did review and take under consideration the decision of the Site Plan Review dated march 29, 2018 addressed to Rod Palmer, Building Commissioner.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented.

J. The approval of this special permit does not include any affordable housing that will be added to the Town's affordable housing inventory as set forth by the Department of Housing and Community Development (DHCD).

The Board of Appeals has weighed the effects of the proposed detached accessory apartment 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 Murphy 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 **4 – 0 to Grant the Special Permit** to Thomas L. and Marysia F. Messer (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to allow a detached accessory apartment structure on subject property known as 190 Goeletta Drive, Hatchville, Massachusetts. This special permit shall be subject to the following conditions:

1. The detached accessory apartment, unfinished basement, height of apartment structure, all setbacks, lot coverage, driveway as proposed and use of the proposed apartment structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Existing Plan – Messer” hand drawn existing floor plans of existing dwelling on subject property – drawn by applicant consisting of three (3) pages all with a Board date ‘received’ stamp of January 8, 2018;
  - “Messer Guest House” – computer generated showing upper and lower floor plan with a Board date ‘received’ stamp of January 8, 2018;
  - “Messer Residence” – Elevation Plans created by Noble Home – Drawing A3 dated March 21, 2018 and with a Board date ‘received’ stamp of March 29, 2018 (these plans are revised from previous plans based on Site Plan Review);
  - “Plot Plan” with Topography Showing Proposed Building for #190 Goeletta Drive Hatchville Falmouth, MA dated 10/28/2001 as drawn by Warwick & Associates Inc. with a revised date of 9/12/2017 – plan is date, stamped and signed by Gary S. Labrie, PLS on 3/22/2018 and stamped and signed by Jack Landers-Cauley, PE – plan also has a Board date ‘received’ stamp of April 2, 2018; and
  - “Site & Septic Design Plan” as drawn by Warwick & Associates Inc. dated 12/28/2017 – plan is not stamped and signed by PE – plan has a Board date ‘received’ stamp of April 2, 2018.
2. There shall be no more than four (4) bedrooms allowed in total on subject property.
3. The use of the detached accessory apartment shall always maintain compliance of Section 240-38 I. of the Code of Falmouth.
4. The applicant is herein allowed to create a full bathroom and laundry facility only within the basement area below the proposed accessory apartment as shown on the plans noted above in Condition 1. However, the remaining basement area shall remain unfinished and not be used or created in to living space.



5. The applicant shall draft and submit to the Board of Appeals a Deed Restriction stating that the basement area below the accessory apartment in the detached accessory structure approved herein shall remain unfinished and not used as living space. The Deed Restriction shall note that a bathroom and laundry facility is allowed through this special permit approval, however, the bathroom and laundry facility is not considered habitable space. The draft Deed Restriction shall be submitted to the Board of Appeals for review by the Board and Town Counsel. When the Deed Restriction is approved and signed off by the applicant and the Town Manager, the Deed Restriction shall then be filed by the applicant with the Barnstable Registry of Deeds and a copy of said filing shall be submitted to the Board of Appeals prior to the final inspection for the detached accessory apartment by the Building Inspector and/or the Zoning Administrator. Use of the detached accessory apartment shall be contingent on the Deed Restriction being filed and submitted with the Board of Appeals as conditioned herein.
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. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. 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:       **004-18**

Applicant(s):               **THOMAS L. MESSER and MARYSIA F. MESSER of Hatchville, MA**

Subject Property:           **190 Goeletta Drive, Hatchville, Massachusetts  
Map 11 Section 02 Parcel 007 Lot 171**

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 represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Terrence J. Hurrie, Acting Chairman, Board of Appeals**

RECEIVED

APR 13 2013

FALMOUTH TOWN CLERK

*DD@330pm*

**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.