

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 036-18

APPLICANT/OWNER: JAY DECOTEAU, TRUSTEE and LEA DECOTEAU, TRUSTEE
of the Menauhant Three Realty Trust

SUBJECT PROPERTY: 507 Central Avenue, East Falmouth, Massachusetts
Assessor's Map: Map 40A Section 02 Parcel 001 Lot 000

DEED/CERTIFICATE: Book 24491 / Page 158

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 10, 2018, 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 over existing deck, and above garage attached to the pre-existing nonconforming single-family dwelling on subject property known as 507 Central Avenue, 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 June 21, 2018.
4. The public hearing was closed on June 21, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren and Alternates Gerald Potamis and Robert Dugan (sitting as voting members) 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)

None

Letters/Referrals/E-mails from Town Departments

- 05/10/2018 Referral submitted to the file Board of Health Agent McGann that states: *Appears to be an existing 5br home that will remain 5 bedrooms – no health issues.*
- 05/14/2018 Referral submitted to the file from Planning Department staff with no comment
- 05/15/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/16/2018 Referral submitted to the file from the Director of Assessing that states: *includes lots 2 and 3 and parcel 1*
- 05/30/2018 Referral submitted to the file from the Water Department that has no comment
- 06/12/2018 Referral submitted to the file from the Town Engineering Department with standard comments and regarding connections and stormwater runoff containment on-site

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 Elevations” - Drawing A2.3 drawn by Longfellow Design-Build dated 4/20/18 and with a Board date ‘received’ stamp of May 10, 2018;

“Proposed Addition 507 Central Avenue in Falmouth, MA” as drawn by Cape & Islands Engineering – Sheet 1 of 1 - Drawing Title ‘Proposed Site Plan’ dated 3/19/18 with a Board date ‘received’ stamp of May 31, 2018; and

“Jay and Lea Decoteau 507 Central Ave, Falmouth” architectural plans drawn by Longfellow Design-Build consisting of: Drawing A0.0 ‘Cover’ dated 4/20/18, Drawing A0.1 ‘Demolition Plans’ dated 4/20/18, Drawing A1.2 ‘Proposed Second Floor Plan’ dated 4/20/18, Drawing A1.3 ‘Proposed Attic Plan’ dated 4/20/18, Drawing A2.1 ‘Elevations’ dated 4/20/18 and Drawing A2.2 ‘Elevations’ dated 4/20/18 – all Drawings have a Board date ‘received’ stamp of May 10, 2018.

Hearing:

Attorney Klauer reviewed the existing site noting that the only nonconformity is a 15.9’ setback to the 3’ contour line off the waters of Bourne Pond – all setbacks and lot coverage are in compliance with Town Code. The existing dwelling is a 2.5 story, five-bedroom dwelling on a 22,500 square foot lot. The applicant is proposing to construct an addition where there is an existing deck on the roof of the attached garage. The addition will allow for the creation of a new master bedroom as shown on Drawing A1.2 of architectural plans. It is noted that an existing bedroom will become an office with a cased opening of no less than four feet (4’). The bedroom count will remain five (5) and there will be no new nonconformities created through this special permit.

Attorney Klauer informed the Board that the subject property was approved by Conservation Commission under a ‘Determination of Applicability’.

The Board discussed plans with Attorney Klauer. The Board asked Attorney Klauer to submit a copy of the Determination by Conservation Commission. Attorney Klauer agreed.

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 507 Central Avenue in East Falmouth contains 22,536 square feet (Upland) 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 allow for an addition to be constructed above existing attached garage. The subject dwelling has a nonconforming setback of 15.9' to the 3' contour line off the waters of Bournes Pond (shown as the Mean High Water mark on 'Proposed Addition' plan. The nonconforming setback to the 3' contour line off the waters of Bournes Pond will remain as existing and not be increased or improved through the special permit approval.

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 pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there is no increase in the existing nonconforming setback to the waters of Bournes Pond, all setbacks are in compliance with Section 240-68 A. and B. of the Code of Falmouth and Lot coverage by structures and structures, parking and paving is in compliance with Section 240-69 A. of the Code of Falmouth. The Board further finds that the proposed addition will enhance the utilization of the dwelling by its occupants.

The Board finds that the existing dwelling has five (5) bedrooms and this count will not increase through the proposed plans approved herein as a Special Permit. The Board further finds that an existing bedroom on the second floor will become an office with a cased opening of no less than four feet (4') as shown on Drawing A1.2 of the architectural plans drawn by Longfellow Design-Build and noted below in the conditions.

The Board finds according to testimony by the applicant's representative, Attorney Klauer, the applicant did receive approval from Conservation Commission under a 'Determination of Applicability' and Attorney Klauer is amenable to submitting a copy of this determination to the file.

In addition to the above findings, the Board finds that the proposed addition 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 above the attached garage structure as there will be no increase to the nonconforming setback to the 3' contour line of Bournes Pond, there will be no new nonconformities created and the lot coverage is in compliance with Town Code.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used 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 unchanged as the addition above the attached garage will be married into the existing second story of the dwelling; and there is no impact on any view or vista from the roadway or abutting properties.

E. The Board of Health Agent (McGann) submitted a referral dated 5/10/2018 that states this is a five-bedroom dwelling and remaining a five-bedroom dwelling so there are no issues.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant should contact the Town Water Department regarding updating of water system as no referral was received from the Water Department.

G. The proposed addition 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 addition to the 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 Potamis 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 the Special Permit** to Jay and Lea Decoteau, Trustees of the Menauhant Three Realty Trust (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition over existing deck above the attached garage increasing habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 507 Central Avenue, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The addition above the attached garage, all setbacks, lot coverage and use of the five-bedroom dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Existing Elevations” - Drawing A2.3 drawn by Longfellow Design-Build dated 4/20/18 and with a Board date ‘received’ stamp of May 10, 2018;
 - “Proposed Addition 507 Central Avenue in Falmouth, MA” as drawn by Cape & Islands Engineering – Sheet 1 of 1 - Drawing Title ‘Proposed Site Plan’ dated 3/19/18 with a Board date ‘received’ stamp of May 31, 2018; and
 - “Jay and Lea Decoteau 507 Central Ave, Falmouth” architectural plans drawn by Longfellow Design-Build consisting of: Drawing A0.0 ‘Cover’ dated 4/20/18, Drawing A0.1 ‘Demolition Plans’ dated 4/20/18, Drawing A1.2 ‘Proposed Second Floor Plan’ dated 4/20/18, Drawing A1.3 ‘Proposed Attic Plan’ dated 4/20/18, Drawing A2.1 ‘Elevations’ dated 4/20/18 and Drawing A2.2 ‘Elevations’ dated 4/20/18 – all Drawings have a Board date ‘received’ stamp of May 10, 2018.

2. There shall be no more than five (5) bedrooms allowed on subject property.
3. The room shown as an 'office' on Drawing A1.2 'Proposed Second Floor Plan' of the architectural plans noted in Condition 1 above shall maintain a cased opening of no less than four feet (4').
4. The applicant shall submit a copy to the Board of Appeals of the approved 'Determination of Applicability' approved by the Conservation Commission prior to the issuance of a building permit.
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 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: **036-18**

Applicant: **JAY DECOTEAU, TRUSTEE and LEA DECOTEAU, TRUSTEE
 of the Menauhant Three Realty Trust**

Subject Property: **507 Central Avenue, East Falmouth, Massachusetts
 Map 40A Section 02 Parcel 001 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
JUN 29 2018

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.