

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

**SPECIAL PERMIT NO:** 073-18

**APPLICANT/OWNER:** JOSEPH M. WALSH of Mansfield, MA

**SUBJECT PROPERTY:** 31 Providence Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 46A Section 21 Parcel 000 Lot 026

**DEED/CERTIFICATE:** Certificate #175093 – Lots 26 & 27 – Plan 4286-A (PI 15)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of August 17, 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 a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 31 Providence 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 October 4, 2018.
4. The public hearing was closed on October 4, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Ed Van Keuren and Associate Members 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 present at the hearing to review and discuss 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)**

09/14/2018 Applicant submitted a letter from The Dempsey Group, Inc. addressed to the applicant and dated September 6, 2018 regarding integrity of existing foundation to withstand second floor addition

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

08/20/2018 Referral submitted to the file from the Planning Department staff with no comment

- 08/20/2018 Referral submitted to the file from Director of Assessing notes that property includes Lots 26 and 27
- 08/23/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/28/2018 An email from Amy Lowell, Superintendent of Wastewater stated at a flow neutral bylaw variance is not required for the application (also submitted on 08/24/2018 Ms. Lowell noted in an email to ZBA staff that the dwelling is not yet hooked to sewer and will be required to prior to April 30, 2019)
- 09/05/2018 Referral submitted to the file from Board of Health Agent that states: *Property is connected to sewer. LPSSA allows 4 bedrooms. No issues from Health.*
- 09/20/2018 Referral submitted to the file from Town Engineering that has standard comments and a recommendation to add dry wells, rain garden or other stormwater measure for the roof.

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**

“Certified Plot Plan” prepared for Joseph M. & Patricia A. Walsh at 31 Providence Street in Falmouth, Massachusetts as drawn on a plan by Cape & Islands Engineering dated August 14, 2018 – Plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of August 17, 2018; and

“Walsh Addition 31 Providence Street East Falmouth, MA” as drawn by Creative Designs by Scott Rapoza consisting of:

- Drawing A2.0 ‘Proposed Exterior Views’ final revision date of 02/20/18 with a Board date ‘received’ stamp of August 17, 2018
- Drawing A1.0 ‘Existing Floor Plans – Proposed Floor Plans, Second Floor Framing Plans’ with a final revision date of 02/20/2018 with a Board date ‘received’ stamp of August 17, 2018
- Drawing A1.2 ‘Roof & Ceiling Plans and Details’ with a final revision date of 02/20/2018 with a Board date ‘received’ stamp of August 17, 2018
- Drawing G1.0 ‘Drawing List and General Inform’ – not dated – with a Board date ‘received’ stamp of August 17, 2018

Hearing:

Mr. Walsh [applicant] reviewed the proposed second floor addition to the existing one-story dwelling with three bedrooms. Mr. Walsh explained how two (2) of the bedrooms would be combined to make a master bedroom on the first floor, the third bedroom would be converted to a small office and create a stairway to the second floor where two (2) of the bedrooms will be relocated (master bedroom on 1<sup>st</sup> floor and 2 bedrooms on 2<sup>nd</sup> floor) along with a new bathroom. There will be ‘dog shed’ dormers on front façade. The lot is nonconforming due to both side yard setbacks less than 10’ (slightly less).

For the record the Zoning Administrator noted that the lot coverage by structures is also nonconforming at 25.4% (requires 20% by structures).

The Board discussed plans with Mr. Walsh including proposed height of the dwelling post addition and maintenance of stormwater runoff. Mr. Walsh stated that the dwelling height would be approximately 24' in height (actual shows 21.8') and that the existing gutters and downspouts would be relocated to second floor addition.

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

Jane Scalli of 304 Maravista Avenue stated support of the project.

Member Potamis made a motion to close the hearing. Member Foreman seconded the motion. Motion carried 5 - 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 31 Providence Street in Teaticket contains 4,800 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District and the Search and Rescue Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to the pre-existing nonconforming one-story, three-bedroom dwelling on subject property. The existing dwelling has a nonconforming setback to the westerly side yard property line of 9.9' and the easterly side has a nonconforming setback of 9.8' – both require a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures (including existing shed) is also nonconforming at 25.4% where 20% is required under Section 240-69 A. It is worth noting that the dwelling is circa 1954 and previously the lot coverage by structures was allowed at 35% until 2002 when a Town Meeting vote changed the lot coverage by structures from the 35% to 20%, thereby rendering the lot coverage nonconforming. The proposed second floor addition will not increase existing nonconformities [setbacks and lot coverage] and will not increase the number of bedrooms above the three that are existing. The subject property will be on Town sewer and four (4) bedrooms are allowed by right.

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 second floor addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists as it will not increase the existing nonconforming side yard setbacks, it will not increase lot coverage and it will not create any new nonconformities on said property. The Board further finds that the proposed addition is in keeping with the general neighborhood as change and additions to height of a lot of homes in the area is occurring. Furthermore, the Board finds that the proposed addition will greatly improve the utilization of the dwelling for its residents.

The Board finds that through testimony by the applicant that his intent is to keep and relocate existing gutters and downspouts to maintain stormwater on site. The Board further finds that the property will be on line with Town sewer which allows up to four (4) bedrooms by right, however, the applicant is maintaining the dwelling with the existing three (3) bedrooms. Furthermore, the Board finds that the height of the dwelling with the second floor addition will be less than the 35' allowed by right under Section 240-70 of the Code of Falmouth – plans submitted for approval show a height of 21.8'.

In addition to the above findings, the Board finds that the proposed second floor 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 second story addition as it will not increase the existing footprint, nonconforming lot coverage and nonconforming setbacks.
- B. The site is suitable for the proposed use as the property is zoned residential and will continue to be maintained as a single-family dwelling 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 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 on-line with Town sewer (see Board of Health referral submitted to the file).
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed second story addition to the existing dwelling as 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 second floor addition to the pre-existing nonconforming single-family dwelling represented 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 Foreman 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 Joseph M. Walsh (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 31 Providence Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The second floor addition to the existing dwelling, all setbacks, height of proposed dwelling, lot coverage and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Certified Plot Plan” prepared for Joseph M. & Patricia A. Walsh at 31 Providence Street in Falmouth, Massachusetts as drawn on a plan by Cape & Islands Engineering dated August 14, 2018 – Plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of August 17, 2018; and

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2. Stormwater runoff shall be maintained on site.
  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 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:       **073-18**

Applicant/Owner:               **JOSEPH M. WALSH of Mansfield, MA**

Subject Property:               **31 Providence Street, Teaticket, Massachusetts  
Map 46A Section 21 Parcel 000 Lot 026**

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 Hurrie, Chairman, Board of Appeals**

RECEIVED

OCT 15 2018

FALMOUTH TOWN CLERK

*ADP 11:40 am*

**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.