

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

SPECIAL PERMIT NO: 074-18

APPLICANT/OWNER: NICHOLAS DELTORTO of Pewaukee, WI

SUBJECT PROPERTY: 18 Moonpenny Lane, East Falmouth, Massachusetts
Assessor's Map: Map 45 Section 17 Parcel 000 Lot 024

DEED/CERTIFICATE: Book 26657 / Page 292

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 21, 2018, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #121-05 pursuant to Section(s) 240-3 C. and 240-23 G. (1) of the Code of Falmouth to construct an addition on the pre-existing nonconforming detached garage to create space for more than two (2) cars on subject property known as 18 Moonpenny Lane, 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 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 Associates 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 Michael Borselli, PE of Falmouth Engineering, Inc., 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

10/01/2018 A letter was scanned to the Board of Appeals from Walter J. Petersen of 15 Moonpenny Lane stating support of the proposed plan to add onto the existing detached garage

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

09/12/2018 Michael Borselli (applicant's representative) submitted a letter to the Zoning Administrator dated September 12, 2018 with revised plans and photographs of existing garage interior

Letters/Referrals/E-mails from Town Departments

- 08/20/2018 ZBA staff submitted to the file a copy of previous Special Permit #121-05 for subject property
- 08/21/2018 Referral submitted to the file Planning Department staff with no comment
- 08/22/2018 Referral submitted to the file from Water Department with no comment
- 08/23/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/27/2018 Referral submitted to the file from Assessors' Office with a note that states: *Includes Lot 24 and Part of Lot 26*
- 09/05/2018 Referral submitted to the file from Board of Health Agent that states: *The septic as-built shows no impact as the proposed garage is well away from the system. Space above the garage doesn't appear to be habitable space.*
- 09/20/2018 Referral submitted to the from Town Engineering Department has standard comments with a recommendation to add drywells, 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

"Plot Plan for #18 Moonpenny Lane" prepared for Nicholas DelTorto in Falmouth, MA as drawn by Falmouth Engineering, Inc. – plan is dated June 8, 2018 with final revision date of 8/28/2018, is stamped, signed and dated by Gary S. Labrie, PLS on 08/30/2018 and has a Board date 'received' stamp of September 12, 2018; and

The DelTorto Residence 18 Moonpenny Lane Falmouth, Massachusetts "Boat Workshop Plans" dated 8/16/2018 and consisting of Drawing A1.0 showing first and second floor plans and Drawing A2.0 showing Elevations – Drawings have a Board date 'received' stamp of September 12, 2018.

Hearing:

Michael Borselli reviewed the existing site with the Board and noted the previous Special Permit #121-05 granting an attached garage with space for more than two vehicles. He explained that this is a modification of that special permit to allow additional garage space to be attached to an existing smaller garage structure located in the northwest corner of subject property. Mr. Borselli submitted photos to the file showing the existing attached garage and its use of storing family/personal items. He further explained that the applicant has a hobby of fixing and restoring boats and would like to add on to existing detached garage a 'boat workshop' to continue his hobby. The second level of the addition is for storage only and is primarily open to below with a mezzanine area. The existing detached garage structure is 4' from the westerly side yard property line and the proposed addition at the rear of existing garage will be

5.8' from the property line, which is less conforming than existing. He explained the reason that the addition cannot be 10' away is the hardship to utilize the access of existing garage doors (alignment of doors) and a 10' setback would push the addition into the backyard compromising the access and landscaping of the property. There is no habitable space proposed; and there will be a mini-split utilized to keep humidity down and have a low-level heat to protect the boat projects. Mr. Borselli stated that the applicant is amenable to installing drywell(s) for roof runoff from additional roof area.

The Board discussed plans with Mr. Borselli. All concerns and questions were addressed.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Dugan made a motion to close the hearing. Member Van Keuren 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 18 Moonpenny Lane in East Falmouth contains 23,591 square feet of Residential B zoned land that is located within the Bournes Pond Coastal Pond Overlay District. The subject property received Special Permit #120-92 for an addition to a pre-existing nonconforming dwelling, however in 2005 the applicant received a building permit to raze and reconstruct the dwelling and construct it in compliance with setbacks under Sections 240-68 A. and 68 B. – the existing detached garage remained as is with a nonconforming setback of 4' to the side property line. In 2005 when the applicant was razing the pre-existing nonconforming dwelling and building a conforming dwelling structure, he applied for a special permit, #121-05 to add an attached garage for more than two (2) cars under Section 240-23 G. (1) of the Code of Falmouth – the Board gave approval. The applicant is now applying under Section(s) 240-23 G. (1) (a) of the Code of Falmouth to construct an additional bay to the detached garage structure 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 pre-existing nonconforming detached garage structure will not be more detrimental than what currently exists as the addition will be 6' from the side yard property line where the existing has a 4' setback. The Board further finds that there will be no new nonconformities created through the proposed garage addition including lot coverage that will remain below the maximum percentages allowed in a residential zoned district pursuant to Section 240-69 A. of the Code of Falmouth. Furthermore, the Board finds that the proposed additional garage space is situated 6' from the property line so that the access from existing garage to proposed space will be in alignment and not compromise access to the back yard.

Section 240-23 G. (1)(a) of the Code of Falmouth allows the Board of Appeals to approve a special permit for garage space for more than two cars on a lot less than 30,000 square feet in size.

The Board finds according to testimony from the applicant, that there will be a split unit installed in the new space to control humidity and for low level heat during winter months. The Board further finds through testimony by the applicant's representative that there is no intent whatsoever to create habitable space within the existing detached garage and proposed addition to said garage that the use will be strictly for space that will allow the applicant to apply his hobby to repair/refinish boats and to keep said work space away from the existing dwelling.

The Board finds that the proposed additional garage space proposed on subject property is properly before the Board as a modification of previous special permit #121-05 and pursuant to Section 240-23 G. (1) (a) of the Code of Falmouth. The Board further finds through testimony by the applicant's representative that the applicant is amenable to installing a drywell off the rear corner of the proposed addition to help maintain runoff on site.

In addition to the above findings, the Board finds that the proposed addition to the existing detached garage structure 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 to the detached garage structure as it will not increase the existing nonconforming setback and there will be no new nonconformities created on subject property including lot coverage.

B. The site is suitable for the proposed use as the property is zoned residential and the single-family dwelling will be maintained as such and the garage space is allowable as an accessory use to the existing primary dwelling use according to zoning.

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 proposed garage addition is in the rear corner of subject behind the existing detached garage structure; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is unaffected through this modification of existing special permit as there will be no habitable space created within the garage addition as represented.

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.

G. The proposed addition to the existing detached garage structure 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 detached garage structure 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 Dugan made a motion to Grant the Modification of previous 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 Modification of Special Permit #121-05 herein under #074-18** to Nicholas DelTorto (herein referred to as Applicant) under Section(s) 240-3 C. and 240-23 G. (1)(a) of the Code of Falmouth to construct an addition to this pre-existing nonconforming detached garage structure on subject property known as 18 Moonpenny Lane, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The addition to the existing detached garage, all setbacks, height of addition, lot coverage and use of garage space shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plot Plan for #18 Moonpenny Lane” prepared for Nicholas DelTorto in Falmouth, MA as drawn by Falmouth Engineering, Inc. – plan is dated June 8, 2018 with final revision date of 8/28/2018, is stamped, signed and dated by Gary S. Labrie, PLS on 08/30/2018 and has a Board date ‘received’ stamp of September 12, 2018; and
 - The DelTorto Residence 18 Moonpenny Lane Falmouth, Massachusetts “Boat Workshop Plans” dated 8/16/2018 and consisting of Drawing A1.0 showing first and second floor plans and Drawing A2.0 showing Elevations – Drawings have a Board date ‘received’ stamp of September 12, 2018.
2. There shall be no habitable space created within the existing detached garage and the proposed addition to said garage.
3. The applicant shall install drywell(s) near rear of proposed addition to existing detached garage structure and said location shall be the determination of the project engineer.
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. 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: **074-18**

Applicant/Owner: **NICHOLAS DELTORTO of Pewaukee, WI**

Subject Property: **18 Moonpenny Lane, East Falmouth, Massachusetts
Map 45 Section 17 Parcel 000 Lot 024**

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 Modification of previous Special Permit #121-05 herein under Special Permit #074-18 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 2013
FALMOUTH TOWN CLERK
09:40 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.