

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

SPECIAL PERMIT NO: 082-18

APPLICANT/OWNER: BRIAN PACKISH of Vineyard Haven, MA

SUBJECT PROPERTY: 20 Nye Road, Falmouth, Massachusetts
Assessor's Map: Map 47B Section 05 Parcel 017 Lot 000

DEED/CERTIFICATE: Book 31074 / Page 14

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of September 12, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-51 A. (2) and 240-3 A. of the Code of Falmouth to acknowledge that three (3) separate dwelling units existed prior to May 19, 1959 and to allow a conversion of one dwelling into two (2) dwelling units on subject property known as 20 Nye Road, Falmouth, 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 October 18, 2018.
4. The public hearing was closed on October 18, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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 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

None

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

09/13/2018 The applicant submitted to the file an "Affidavit" from Karl G. Gerry, Trustee of the Gerry Realty Trust known to the applicant as family of the original owners of subject

property who have since passed away, noting that the three (3) dwellings on subject property existed prior to 1959

Letters/Referrals/E-mails from Town Departments

- 09/12/2018 Board of Appeals staff submitted to the file a copy of old Assessors' cards noting that the existing three dwelling units on site existed at least thirty (30) years prior to card's last date of 1962
- 09/17/2018 Referral submitted to the file from Director of Assessing with no comment
- 09/18/2018 Referral submitted to the file from Water Department states: *May need water upgrades if required.*
- 09/18/2018 Referral submitted to the file from Planning Department staff with no comment
- 09/20/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 09/27/2018 Referral submitted to the file from Town Engineering Department with attached comments and aerial photos from 1950, 1960 and 1980 – all showing three (3) dwellings on subject property
- 10/02/2018 Referral submitted to the file from Board of Health Agent that states: *11 bedroom septic system installed 3/2018. Total bedroom count for all structures should not exceed 11.*
- 10/16/2018 Referral submitted to the file from Conservation Commission with no comment

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 Brian Packish for #20 Nye Road in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated February 13, 2018 is signed and dated by Joel R. Kubick, PLS on 02/13/2018 and has a Board date ‘received’ stamp of September 12, 2018 (Note copy of this plan submitted showing parking plan on lot);

“Plan of Proposed Sewage Disposal System” prepared for Brian Packish for #20 Nye Road in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 3 dated February 23, 2018 with a final revision date of 3/26/18 signed by Michael B. McGrath, PLS and Tim Santos, PE and with a Board date ‘received’ stamp of September 12, 2018;

“Construction Details of Proposed Sewage Disposal System” prepared for Brian Packish for #20 Nye Road in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 3 dated February 23, 2018 signed by Tim Santos, PE and with a Board date ‘received’ stamp of September 12, 2018;

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“Packish Renovation 20 Nye Road Falmouth MA 02540”, plans have no author and consist of:

- Drawing EX1 ‘Existing Conditions Plans’ dated 07/21/2018
- Drawing EX2 ‘Existing Conditions – Elev’ dated 08/08/2018
- Drawing A101 ‘Proposed Floor Plans’ dated 08/19/2018
- Drawing A201 ‘Proposed Elevations’ dated 08/19/2018

All Drawings have a Board date ‘received’ stamp of September 12, 2018.

Hearing:

Brian Packish, applicant, reviewed the existing site and the three (3) dwellings on subject property that is zoned Business 2 except for a small portion at the southeasterly corner of the lot that is zoned General Residence. The three (3) dwellings, according to an affidavit, aerial photos submitted by Engineering Department and old Assessors’ cards submitted to the file existed prior to May 19, 1959 which makes the property pre-existing nonconforming under Section 240-3 A of the Code of Falmouth. Mr. Packish explained he recently purchased the property and after reviewing the character of the general neighborhood area, he thought the best use for the property is residential and not convert it to business use, so he is applying under Section 240-51 (a)(2) of the Code of Falmouth to convert the existing main dwelling (front dwelling off Nye Road) into two (2) dwelling units with no increase in the existing footprint, no new nonconforming setback and no increase in the lot coverage by structures; there are a total of eight (8) existing bedrooms on subject property and the conversion of the main dwelling into two (2) units will add one (1) additional bedroom bring the total bedroom count to nine (9). He further stated that he recently installed a new septic system with a capacity for eleven (11) bedrooms. He briefly reviewed the parking area for the dwellings and reviewed the comments from Engineering Department, explaining that he had met with them to discuss and resolve concerns including addition of drywells.

The Board discussed plans with Mr. Packish. 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 Bielan 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 20 Nye Road in Falmouth contains 18,066 square feet of primarily Business 2 zoned land with a small portion at the rear corner zoned General Residence. The property is not located within any overlay district. The applicant applied under Section(s) 240-3 A. of the Code of Falmouth for acknowledgement that three (3) dwellings existing on the subject property prior to May 19, 1959 and Section 240-51 A. (2) to convert existing main dwelling into two (2) dwelling units without increase to footprint. The main dwelling has a nonconforming setback of 19.4' to the front property line that requires a 25' setback under Section 240-68 A. of the Code of Falmouth and both cottages behind the main dwelling have nonconforming side yard setbacks of less than the required 10' setbacks under Section 240-68 B. of the Code of Falmouth. Lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth. The majority of the property is zoned Business 2 which allows multi-family dwellings and the applicant is applying to convert the existing main dwelling into two units with no material change to the exterior of the existing dwelling. The applicant informed the Board that although the property is zoned Business and abuts other commercial property, the main character of the area is residential and therefor decided that a continued use of residential uses on the property is more appropriate than converting to commercial use(s).

Section 240-3 A. of the Code of Falmouth requires that an applicant submit credible evidence to the Board of Appeals sufficient enough for a determination that if there are more than two (2) dwellings on a lot, said dwellings existed prior to May 19, 1959 and that said use of the dwellings had not been abandoned or not used for a period of two (2) years are therefore pre-existing nonconforming.

The Board finds that credible evidence was submitted to the file in the form of an Affidavit, old Assessors' cards showing the three (3) dwellings and aerial photos from 1950 and 1960 submitted by the Town Engineering Department showing the three (3) dwelling structures on subject property and therefore determine that the three (3) dwellings are pre-existing nonconforming as they existed prior to May 19, 1959.

Section 240-3 A. of the Code of Falmouth further states that *"In approving any alteration, extension or modification the Board of Appeals shall require that the number of dwelling units shall be limited to the same as in existence on May 19, 1959."*

The Board finds that the applicant also applied under Section 240-51 A. (2) of the Code of Falmouth that states properties zoned Business 1, 2 and 3 may convert a dwelling into up to four (4) units with no material change to the exterior of said dwelling. The Board further finds that subject property is zoned Business 2 and is therefore allowed a special permit to convert the main dwelling into two (2) units with an increase of one (1) bedroom and no material change to the exterior of the dwelling. Furthermore, the Board finds that a residential zoned property is held to the same number of bedrooms on subject property as existing on January 1, 1980, however, Business zoned properties are not held to the same standard thereby allowing the Board to approve an additional bedroom within the existing main structure on subject property.

The Board finds that the dwellings on subject property have nonconforming setbacks and the proposed conversion of the main dwelling structure into two (2) dwelling units will not increase the existing nonconformities and that no new nonconformities will be created through the proposed conversion as represented herein. The Board further finds, under Section 240-3 C. of the Code of Falmouth, that the proposed conversion of the main dwelling into two (2) units and the acknowledgement that three (3)

dwelling existed on subject property prior to May 19, 1959 is not substantially more detrimental than what currently exists. Furthermore, the Board finds that the applicant has substantially improved the subject property since he purchased said property earlier in 2018.

The Board finds that the applicant submitted a plan showing parking on subject property for the main house as existing as well as additional parking at the rear of the main structure near the two (2) cottages and that said parking is sufficient for the dwelling units on site. The Board further finds through testimony by the applicant that he is amenable to adding drywells or some form of measure to maintain stormwater runoff on subject property. Furthermore, the Board finds that the applicant has installed a new septic system that will accommodate eleven (11) bedrooms, but according to his testimony and the approval by the Board of one (1) additional bedroom to the main structure, there will be no more than nine (9) bedrooms in total on subject property.

The Board finds through the referral submitted from the Town Engineering Department and by testimony from the applicant, that the concern of and recommendation from the Engineering Department, that the applicant will work with them so that all three (3) individual dwelling structures be assigned an address.

In addition to the above findings, the Board finds that the proposed conversion of the main dwelling into two (2) units on subject property 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 conversion of the main dwelling into two (2) units without any increase in the existing nonconformities on site and there will be no increase to the conforming lot coverage on site.

B. The site is suitable for the proposed use as the property is zoned Business 2 and allows the proposed conversion of a dwelling pursuant to Section 240-51 A. (2) of the Code of Falmouth.

C. The impact for the additional one (1) bedroom on subject property is determined to be very minimal with no impact on traffic flow and safety and the parking on site will be improved with an additional driveway as proposed at the northwest corner 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 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 sewage disposal system is in place and signed off as an eleven (11) bedroom system by the Board of Health (see referral submitted to the file). However, the use on subject property will be limited to nine (9) bedrooms as testified to by the applicant during hearing process.

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

G. The proposed conversion of the main dwelling discussed and represented herein will have no effect on the supply of affordable housing on Falmouth's subsidized housing inventory.

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 acknowledgement of three (3) dwellings existing on subject property prior to May 19, 1959 and the proposed conversion of the main dwelling

into two (2) dwelling units 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 Bielan 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 **5 – 0 to Grant the Special Permit** to Brian Packish (herein referred to as Applicant) under Section(s) 240-51 A. (2) and 240-3 A. and C. of the Code of Falmouth to acknowledge that three (3) separate dwelling units existed prior to May 19, 1959 and to convert the main dwelling into two (2) dwelling units on same subject property known as 20 Nye Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The conversion of the main dwelling into two (2) units, the addition of only one (1) bedroom in same structure, all setbacks, lot coverage, parking, septic system and use of the dwelling units on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

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2. There shall be no more than nine (9) bedrooms allowed on subject property without further review and approval from the Board of Appeals.
3. There shall be no more than four (4) dwelling units (2 in main dwelling and 2 cottages) allowed on subject property.
4. The applicant will install drywells on subject property to maintain stormwater runoff and location of said drywells or other measure will be at the discretion of the project engineer.
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:

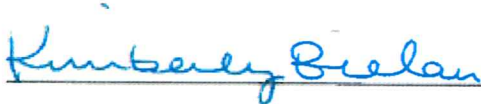
Special Permit Number: 082-18

Applicant/Owner: BRIAN PACKISH of Vineyard Haven, MA

Subject Property: 20 Nye Road, Falmouth, Massachusetts
Map 47B Section 05 Parcel 017 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.



Kimberly A. Bielan, Clerk, Board of Appeals

RECEIVED

OCT 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.