

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 110-18

APPLICANT/OWNER: Steven P. and Debra F. Digiusto, Trustees of the Digiusto Family Revocable Trust, 11 Sunset Lane, Hingham, Massachusetts

SUBJECT PROPERTY: 2 Shore Road, North Falmouth, Massachusetts

Assessor's Map: Map 13, Section 07, Parcel 000, Lot 075

DEED/CERTIFICATE: 206043 75 10528-H (SH 2)

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed on November 13, 2018, with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3 of the Code of Falmouth, to construct a small addition to the existing deck, and enclose space over the second floor deck, to use as office space, on subject property, known as 2 Shore Road, North Falmouth, Massachusetts.
2. Notice was duly given, as required by M.G.L. Ch. 40 A, § 11, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list, and at which hearing, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was originally scheduled to open on December 20, 2018. However, the Zoning Board of Appeals lacked a quorum to hold the public hearing. The hearing was rescheduled to be heard on January 10, 2019, and was re-advertised in a local newspaper, with notices mailed to abutters. The advertised public hearing was opened on January 10, 2019.

4. The public hearing was closed on January 10, 2019, wherein the Zoning Board of Appeals, consisting of Chairman Terrence J. Hurrie, Vice Chairman Kenneth H. Foreman, Member Edward Van Keuren, Member Paul Murphy, and Associate Member Gerald Potamis (appointed as voting member by Mr. Hurrie), made a decision to grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

5. Kevin P. Klauer II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA, reviewed and discussed the request for special permit with the Board.

6. The documents and information received by the Zoning Board of Appeals are on file in the office at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- None

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

- November ____, 2018 (sic), letter of authorization for representation
- November 13, 2018 letter from Kevin. P. Klauer II, Esq., 39 Town Hall Square, Falmouth, MA

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 12/7/18
- Conservation Commission, no comment, dated 11/28/18
- Board of Health, comments, dated 11/27/18
- Water, comments, dated 11/15/2018
- Assessors, no comments, dated 11/15/18
- Fire Department, no comments, dated 11/15/18
- Planning, no comments, dated 11/14/18

Plans submitted by Applicant/Applicant's Representative

- Plot plan "2 Shore Road in Falmouth, Massachusetts", prepared by Cape & Islands Engineering, Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA, dated October 9, 2018
- "Digiusto's Residence, 2 Shore Rd", comprising pages A0.0, A1.0, A1.1, A1.2, A2.0, A2.1, and A4.0, all prepared by Longfellow Design Build, 367 Main Street, Falmouth, MA, and dated 10/02/2018

Hearing:

Appearing before the Board was Kevin P. Klauer II, attorney for the property owners. Mr. Klauer presented the case information, and discussed the plans for an addition to the existing deck, at the westerly side of the dwelling, plus enclosing space over the existing deck on the second floor, for use as an office. An existing storage shed at the northwest side of the dwelling, will be removed. Mr. Klauer stated that the lot comprises 11,629 square feet of lot area, in the Residential B zoning district, and

reported that the removal of the storage shed will actually result in a net decrease in lot coverage. The existing lot coverage by structures is 2,951 square feet, or 25.37%. The proposed lot coverage by structures is 2,939 square feet, or 25.27%. He stated that there will be no new nonconformities created, and no change to the height of the dwelling. It was reported that there are two bedrooms in the basement, and one bedroom on the first floor.

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

Associate Member Potamis made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5-0.

Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted at the hearing, and made the following findings:

The subject property, located at 2 Shore Road, Falmouth, Massachusetts, comprises 11,629 square feet of area, in Residence B zoned land, within the Wild Harbor River Coastal Overlay District. The lot has 142.59 feet of frontage on Marshore Way, and 128.98 feet of frontage on Shore Road. The dwelling is sited 24.9 feet from Marshore Way, and 32.1 feet from Shore Road. The dwelling is sited 9.8 feet from the northerly property side lot line, and 8.2 feet from the westerly property side lot line. The premises is nonconforming due to insufficient lot area, and the encroachment into the northerly and westerly side lot lines. The applicant applied under Section(s) 240-3 of the Code of Falmouth to allow construction of an addition to the existing deck, at the westerly side of the dwelling, adding 54 square feet, plus enclosure of space over the existing deck on the second floor, for use as an office. A storage shed, comprising 66 square feet, sited at the northwesterly area of the dwelling, is being removed. The existing lot coverage by structures is 2,951 square feet, or 25.37%. The proposed lot coverage by structures is 2,939 square feet, or 25.27%.

The Board found that the proposed changes to the pre-existing nonconforming dwelling were not substantially more detrimental to the neighborhood than the existing dwelling.

In addition to the above findings, the Board finds that the proposed deck addition, and office space on the second floor, will be in harmony with the general purpose and intent of the By-Law, and does include consideration as 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 deck expansion and office space, with the lot coverage being reduced slightly from 25.37 to 25.27%, which includes removal of the storage shed.

B. The site is suitable for the proposed use, as the property is zoned residential, and has been used as such since its inception.

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 the site.

D. There does not appear to be any impact on the visual character of the neighborhood, with the ridge height remaining the same at 23 feet, and no impact on any view or vista from the roadway or abutting properties, as the deck addition comprises only 54 square feet. The setbacks will remain the same.

E. The septic system is approved for three bedrooms, and there will be no increase in bedroom count.

G. The deck and office space 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 in compliance with 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 Zoning Board of Appeals weighed the effects of the proposed deck addition and office enclosure at 2 Shore Road, Falmouth, Massachusetts, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Associate Member Potamis made a motion to grant the Special Permit with conditions. Member Van Keuren seconded the motion; with a unanimous 5-0 vote.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0 to grant a special permit under Section(s) 240-3 of the Code of Falmouth to allow the first floor deck addition and second floor office enclosure. This special permit shall be subject to the following conditions:

1. The first floor deck addition, and second floor office enclosure, shall be as shown on the plans submitted and reviewed by the Board as follows:
 - Plot plan "2 Shore Road in Falmouth, Massachusetts", prepared by Cape & Islands Engineering, Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA, dated October 9, 2018
 - "Digiusto's Residence, 2 Shore Rd", comprising pages A0.0, A1.0, A1.1, A1.2, A2.0, A2.1, and A4.0, all prepared by Longfellow Design Build, 367 Main Street, Falmouth, MA, and dated 10/02/2018
2. One existing second floor deck shall be converted to office space. This dwelling is limited to three bedrooms.
3. The storage shed at the northwest portion of the dwelling shall be removed.

4. Any deviation, no matter how minor, from plans submitted and approved, 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. The Applicant shall comply with the Engineering referral recommendations of 12/7/18, regarding drywells.

6. 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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.)


7. 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 Zoning Board of Appeals.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 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, Chairman, Board of Appeals

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JAN 23, 2019 AM 8:27
TOWN CLERK 

Date Filed With Town Clerk