



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO: #034-19

APPLICANT/OWNER: Darmalle Corp., P.O. Box 395, East Falmouth, Massachusetts

SUBJECT PROPERTY: 0, 5 and 15 Old Meeting House Road and 424 East Falmouth Highway, East Falmouth, Massachusetts

Assessor's Map: Map 33 Section 20 Parcel 008A Lot 000 – 0 Old Meetinghouse Road

Map 33 Section 20 Parcel 008 Lot 000 – 5 Old Meetinghouse Road

Map 33 Section 20 Parcel 009 Lot 000 - 15 Old Meetinghouse Road

Map 33 Section 20 Parcel 007 Lot 000 – 424 East Falmouth Highway

DEED/CERTIFICATE: Book 31505, Page 301 & Book 31505 Page 314

SUMMARY: Special Permit issued, with conditions

PROCEDURAL HISTORY

1. On May 14, 2019, an application was filed with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3 C and 240-51 A. (5) of the Code of Falmouth, to alter existing nonconforming retail structure to allow multifamily use on the upper level, at "0", 5 and 15 Old Meeting House Road, and 424 East Falmouth Highway, East Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The previous Zoning Board of Appeals case for the Premises included:

- Variance #2618 issued December 2, 1974 for construction of building closer to the street than the minimum requirement of 25 feet.

4. The advertised public hearing was opened on July 11, 2019, at which hearing, relevant testimony was heard.

5. Kevin P. Klauer II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA appeared before the Board, representing Darmalle Corp., P.O. Box 395, East Falmouth, Massachusetts (the "Applicant"), as to the "Premises". Mr. Klauer II discussed the request for special permit with the Board.

6. The public hearing was closed on July 11, 2019. Minutes of the hearing(s) are on file in the Board of Appeals.

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

Letters/E-mails from Abutters/Interested Parties: None

Letters/Referrals/E-mails from Town Departments

Referrals were sent to the following Departments:

Assessors, Building, Conservation, Engineering, Health, Fire Department, Planning, Board of Selectmen, Water Department

- Email from Health Agent, McGann, dated July 1, 2019 states: *Septic system permit issued for this project on 5-28-19*
- Referral from Assessors, dated May 17, 2019 – no comment
- Referral from Planning Department, dated May 21, 2019 – no comment
- Referral from Falmouth Fire Department, dated May 24, 2019 – no comment
- Referral from the Water Department, dated May 30, 2019 states: *If the proposed is to create apartments the existing service to #5 will remain and owner will be responsible. If condos, each must have a dedicated service.*
- Referral from Conservation, dated May 30, 2019 – no comment
- Referral from Engineering, dated June 17, 2019 with standard comments; *what impact will the change in use have on the required number of parking spaces for the lot, is there a parking analysis? It appears that 6 parking spaces on the west side of the lot fall partially within the Old Meetinghouse right of way. There are no proposed modifications to these spaces, however if there are future modifications, relocating out of the right of way is recommended.*

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

- Authorization for representation, signed by Deborah A. Druley, dated May 10, 2019
- Letter from Attorney Klauer regarding plans, dated May 9, 2019
- ZBA staff submitted previous special permit #2618
- Email from Attorney Klauer to ZBA staff, dated June 14, 2019
- Letter from Attorney Klauer, dated June 25, 2019

### Plans submitted by Applicant/Applicant's Representative

- Renovations to: Commercial Building 410 [sic] East Falmouth Highway, Falmouth, Massachusetts drawn by Giampietro Architects, 354 Gifford Street, Falmouth, MA 02540 consisting of; Sheet AB2 'As-Built Floor Plan' dated April 30,2018; Sheet AB1 'As-Built Elevations' dated January 2,2019; Sheet A1' Elevations' dated January 4,2019 and Sheet A2 'Second Floor Plan' dated January 4,2019
- 'Plot Plan – Existing Site and Subsurface Sewage Disposal System Upgrade' 2 sheets prepared for Dar Malle Corp 412 [sic] East Falmouth Highway, East Falmouth, Massachusetts drawn by BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, Massachusetts 02540, dated April 25,2019
- 'Plot Plan – Existing Site' prepared for Dar Malle Corp. 412 [sic] East Falmouth Highway, East Falmouth, Massachusetts drawn by BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, Massachusetts 02540, dated April 25,2019 and revised May 14,2019
- 'Plot Plan – Existing Site' prepared for Dar Malle Corp. 412 [sic] East Falmouth Highway, East Falmouth, Massachusetts drawn by BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, Massachusetts 02540, dated April 25,2019, revised May 14,2019 with a final revision date of June 5, 2019

### Hearing:

July 11, 2019

The Notice of Public hearing was read into the record, as well as the list of Town referrals received.

Kevin Klauer II appeared before the Board, representing Darmalle Corp. (the "Applicants"). Mr. Klauer II stated that the current 4 lots will be merged into a single lot. He reported that once the lots were merged, it would be a conforming lot. The existing subject building, 412 East Falmouth Highway, contains a restaurant and office space, where it is proposed to convert the second story office space to three residential units. The site comprise 1.88 acres, with a combined building footprint of 14,000 square feet, representing 17.6% lot coverage. The structure is non-conforming to the side yard setback; the existing ridge height is 26.5 feet. Stairs and a landing will be added to the structure for egress for the apartments. The total lot coverage by structures/parking/paving is 61.7%.

There is an existing single-family dwelling at the northwest corner of the Premises, which will remain, resulting in a total of 4 residential units on the combined lot. Mr. Klauer II noted that there is a shortage of rental units in Town. While these units will not add to the Town's subsidized housing inventory (affordable units counted by the State), the year-round units are nonetheless expected to be rented affordably. Mr. Klauer noted that this change from office space to residential will not require any change to the parking requirement, where the apartments require 6 parking spaces.

There were no public comments.

Mr. Potamis made a motion to close the hearing, which was seconded by Mr. Van Keuren, and voted unanimously to close the hearing, and proceed to deliberate.

Findings:

The subject site, "O", 5 and 15 Old Meeting House Road, and 424 East Falmouth Highway, East Falmouth, Massachusetts (the "Premises"), is sited in the Business 2 Zoning District, and the Bourne Pond Coastal Pond Overlay District. The Premises is currently nonconforming as four separate lots, but as combined to a single lot, will comprise 79,460 square feet of area, in a district requiring a minimum of 40,000 square feet. The Premises has approximately 229.97 feet of frontage on East Falmouth Highway, and approximately 305.46 feet of frontage on Old Meeting House Road, where the minimum required is 200 feet. The Premises has approximately 247.89 feet of lot width, where the minimum in the district is 200 feet. The proposal involves the alteration of an existing nonconforming retail structure to allow multifamily use on the upper level, for a density not to exceed six units per acre, within the merged lot.

The Premises has been the subject of prior Zoning Board of Appeals Decisions, as enumerated above. The Engineering department has issued a referral, noting that six parking spaces serving the subject building fall partially within the Old Meeting House Road right-of-way. Any future modifications shall require that these parking spaces are relocated out of the public right-of-way.

The proposal is to repurpose the existing second floor office space to be utilized as three residential units. As such, the change to lot coverage is minimal: lot coverage by structure will be increasing from 17.61% to 17.96%, where 40% is the By-Law limit. Lot coverage by structure/parking/paving is increasing from 61.17% to 61.52%, where 70% is the By-Law limit.

In addition to the above findings, the Board finds that the proposed 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 repurpose of the existing second floor of 412 East Falmouth Highway to be three rental residential units.
- B. The site is suitable for the proposed use as the property is zoned Business 2 and the addition of the three residential units will fall within the By-Law §240-51 A. (5) for the provision of residential units not exceeding 6 units per acre.
- C. There is no expected impact on traffic flow and safety.
- D. The visual character of the subject property and neighborhood will be remain largely the same, as the existing structure is being maintained, with the addition of egress stairs to the second floor.
- E. The water department has indicated that the existing water service is sufficient. The Premises is on a septic system.
- F. There are adequate utilities to the Premises.
- G. The proposed building renovation discussed and represented herein will not create units that will count toward the Town's Subsidized Housing Inventory, however, year-round rental units within an affordable range will contribute to the identified need for affordable housing in Falmouth.
- H. The Planning Board issued no comment on the application.

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 specifically include affordable housing.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0 to grant this special permit, following motion made by Mr. Dugan, and seconded by Mr. Van Keuren, under Section(s) 240-3C and 240-51 A. (5) of the Code of Falmouth, to allow conversion of second floor office space to three residential units, at "0", 5 and 15 Old Meetinghouse Road, and 424 East Falmouth Highway, East Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

1. The construction shall be as represented to the Board, and as shown on plans submitted and reviewed by the Board, entitled as follows:

- Renovations to: Commercial Building 410 [sic] East Falmouth Highway, Falmouth, Massachusetts drawn by Giampietro Architects, 354 Gifford Street, Falmouth, MA 02540 consisting of; Sheet AB2 'As-Built Floor Plan' dated April 30,2018; Sheet AB1 'As-Built Elevations' dated January 2,2019; Sheet A1' Elevations' dated January 4,2019 and Sheet A2 'Second Floor Plan' dated January 4,2019
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2. The Applicant shall merge the lots as presented to the Board. Proof of the merger of the lots shall be provided to the Zoning Board of Appeals, and is a pre-condition for a building permit.

3. The development of the Premises is limited under By-Law § 240-51 A. (5) to not exceed six units per acre.

4. A final As-Built plan shall be provided to the ZBA. The Applicant is required to identify if there are any changes made to the approved plan, and seek proper approval, or to certify that there were no changes.

5. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request, subjecting any unapproved construction be ordered undone.

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, 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.)

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 Board of Appeals.

8. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss unresolved matters of concern.

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.



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Robert B. Dugan, Zoning Board of Appeals

RECEIVED  
AUG 9, 2019 PM 8:31  
TOWN CLERK

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Date Filed With Town Clerk