



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 010-20

APPLICANT/OWNER: Lionel Pinsonneault, Trustee of the Dillingham Realty Trust,
541 Thomas B. Landers Road, East Falmouth, Massachusetts

SUBJECT PROPERTY: 100 Dillingham Avenue, Falmouth, Massachusetts

Assessor's Map: Map 38 Section 10 Parcel 028 Lot 083

DEED/CERTIFICATE: Certificate No. 201454

SUMMARY: Special permit granted with conditions

PROCEDURAL HISTORY

1. On February 12, 2020, an application was filed by Lionel Pinsonneault, Trustee of the Dillingham Realty Trust, 541 Thomas B. Landers Road, East Falmouth, Massachusetts (the "Applicant") with the Zoning Board of Appeals, requesting a special permit to reconstruct the existing building, with previously approved addition, at 100 Dillingham Avenue, 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 advertised public hearing was opened on April 2, 2020. Board members present included Terrence J. Hurrie, Kenneth Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry.
4. Michael Lahart appeared before the Board, representing the Applicant.

5. The public hearing was closed on April 2, 2020, following a motion made by Mr. Foreman, seconded by Ms. Barry, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

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

- Lionel Pinnsonneault, Applicant, submitted an application for a special permit, filing fee and appropriate plans; application was filed with the Town Clerk on February 12, 2020
- Letter from Hawksworth Engineering with three (3) photos dated January 22, 2020
- Letter to the Planning Board from applicant requesting administrative approval for changes dated February 3, 2020

Letters/Referrals/E-mails from Town Departments

- Referral from the Assessors dated February 14, 2020 – no comment
- Referral from the Historical Commission dated February 14, 2020 signed by staff: *The HC will vote on the request for a waiver from the 1 year demolition delay bylaws at their March 4, 2020 meeting.*
- Referral from the Building Department dated February 13, 2020 signed by Rod Palmer, Building Commissioner: *On 12-30-2019 I visited the property located at 100 Dillingham Avenue. Based on my observations, I am in support of the Razing and Reconstruction of the structure in its entirety.*
- Referral from the Planning Department dated February 14, 2020 signed by staff: *The PB voted to allow administrative approval of the modifications (bldg. being demo'd [sic] rather than restored) at their 2/11/2020 mtg [sic] as long as the design plans originally approved didn't change).*
- Referral from the Fire Department dated February 20, 2020 – no comment
- Referral from the Water Department dated February 23, 2020 signed by staff: *Water Service on record is of adequate size for town's purposes.*
- Referral from the Conservation Commission dated March 9, 2020 signed by Conservation Agent: *Establish limit of work and erosion control to contain stormwater on site.*
- Referral from the Engineering Department dated March 13, 2020 signed by Scott Schluter, PE: *No comment to this structural design revision. This project was reviewed in 2017.*
- 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
- ZBA Staff submitted 2017 special permit (061-17)
- Email dated February 13, 2020 regarding future hearing date
- Administrative Approval decision from the Planning Board, dated February 20, 2020

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

Plans submitted by Applicant/Applicant's Representative

- 'Existing Floor Plans' sheet EXIST 1 dated 11-19-13 prepared for Nimrod Property – Existing Conditions, Falmouth, Ma as drawn by Skaala, A Design Corporation, PO Box 817, Camden, ME;
- 'Existing Conditions Plan' sheet 1 of 6 dated July 6, 2017 with a final revision date of February 4, 2020, 'Layout Plan' sheet 2 of 6 dated July 6, 2017 with a final revision date of February 4, 2020,

prepared for Chappy LLC, Falmouth as drawn by Falmouth Engineering 17 Academy Lane, Suite 200, Falmouth, Ma – plan is stamped and signed by Gary S. LaBrie, PLS 2/6/2020; and

- ‘Building A – Basement Plan’ sheet A-1.0A, ‘Building A – First Floor Plan’ sheet A-1.1A, Building A – Second Floor Plan’ sheet A-1.2A, ‘Building A – Exterior Elevations’ sheet A-2.1A, ‘Building A – Exterior Elevations’ sheet A-2.2A all plans are dated August 29, 2018 – as drawn by Saltonstall Architects, 380 Wareham Street, Marion, Ma – plans are not signed or stamped

Hearing April 2, 2020:

Voting members include Mr. Hurrie, Mr. Foreman, Mr. Van Keuren, Mr. Dugan, and Ms. Barry. Mr. Morse recused from the hearing, and did not participate.

The Notice of Hearing and referrals were read into the record. It was stated that the Board previously issued special permit #061-17 in 2017 to construct an addition to the existing building at 100 Dillingham Avenue, Falmouth, Massachusetts (the “Premises”), to create five apartments plus commercial space. The current owner of the property stated in his letter of February 3, 2020, that the structure was in a dangerous, deteriorated condition, and provided a letter from Christopher J. Hawksworth PE, a structural engineer, dated January 22, 2020, concurring that it would be prohibitively expensive to repair the building.

Thereby, the Applicant would instead like to reconstruct the building, to the same dimensions as were previously approved. Michael Lahart, project manager, appeared before the Board, and reported that he has a background in historical renovations, and that any historical pieces of the building that could be saved would be. It may be possible to build a display with the saved timbers. Mr. Lahart stated that they seek to rebuild the structure, with the proposed addition, and that they will follow the same plans and specifications as previously approved.

Kevin Klauer, Ament Klauer, LLP, 59 Town Hall Square, Falmouth, MA commented that this case was originally proposed to the Historical Commission as a salvage, but that there was an understanding that this was no longer possible, due to the extreme dilapidated condition of the structure. (The Historical Commission is anticipated to vote an approval in a spring meeting.) Mr. Klauer noted that the abutters were largely in favor of the reconstruction, due to the condition of the building.

No one further commented on the application. Following a motion by Mr. Foreman, and seconded by Ms. Barry, the Board voted unanimously to close the hearing.

Mr. Dugan made a motion to grant the Special permit, which was seconded by Mr. Foreman, and unanimously voted.

Findings:

The subject property, 100 Dillingham Avenue, Falmouth, Massachusetts (the “Premises”), was the subject of Special Permit #061-17, issued in 2017, to construct an addition to the existing building at 100 Dillingham Avenue, Falmouth, Massachusetts (the “Premises”), to create five apartments plus commercial space, within this structure. The Premises comprises 56,210 square feet of area, is zoned as Business 3, and is sited within the Inner Harbor Coastal Pond Overlay. Due to the testimony related to the dilapidated condition of the structure, the intent now is to raze and fully reconstruct the building, to the same dimensions as was previously approved.

1. The Town Conservation agent has requested a limit of work line, with erosion control installed, to contain stormwater on site.
2. The Planning Board voted to allow administrative approval for the building to be reconstructed to the same dimensions as were previously approved, at their meeting on February 11, 2020.
3. The Building Commissioner visited the Premises on December 30, 2019, and reported that he is in support of the reconstruction.
4. The Historical Commission is expected to vote on the request for a waiver from the one-year demolition delay By-Law in March 2020.

There were no public comments in opposition to the proposal.

In addition to the above findings, the Board finds that the proposed building 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.

The Zoning Board of Appeals weighed the effects of the raze and reconstruction at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 C and 240-68 D of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Foreman, voted unanimously, to grant a special permit, for the raze and reconstruction at 100 Dillingham Avenue, Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:


Conditions:

1. The construction shall be substantially as shown on the plans:
 - 'Existing Floor Plans' sheet EXIST 1, dated 11-19-13, prepared for Nimrod Property – Existing Conditions, Falmouth, Ma, as drawn by Skaala, A Design Corporation, PO Box-817, Camden, ME;
 - 'Existing Conditions Plan', sheet 1 of 6, dated July 6, 2017, with a final revision date of February 4, 2020, 'Layout Plan' sheet 2 of 6, dated July 6, 2017, with a final revision date of February 4, 2020, prepared for Chappy LLC, Falmouth as drawn by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, Ma – plan is stamped and signed by Gary S. LaBrie, PLS 2/6/2020; and
 - 'Building A – Basement Plan' sheet A-1.0A, 'Building A – First Floor Plan' sheet A-1.1A, Building A – Second Floor Plan' sheet A-1.2A, 'Building A – Exterior Elevations' sheet A-2.1A, 'Building A – Exterior

Elevations' sheet A-2.2A, all plans are dated August 29, 2018 – as drawn by Saltonstall Architects, 380 Wareham Street, Marion, Ma – plans are not signed or stamped

2. The Conditions of Permit 061-17 shall remain in full force and effect, except as modified herein.
3. The Applicant shall gain approval from the Historical Commission.
4. The address of the Premises shall be properly posted in compliance with §99-1, prior to a final sign off for the building permit.
5. The Applicant shall provide to the Conservation agent the limit of work line, and provide erosion controls installed, to be approved by the Conservation agent, to contain stormwater on site.
6. 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 Zoning Board of Appeals may deny the request.
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 special permit shall lapse three 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.

True Copy Attest:



Noreen H. Stockman, Zoning Administrator

Town of Falmouth, Massachusetts

RECEIVED
APR 22 2020 AM 8:29
TOWN CLERK

Date Filed With Town Clerk