

Zoning Board of Appeals Decisions Decisions for: 12-04-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 87-14

APPLICANT/OWNER: LINDA J. BROWN of Grafton, MA

DEED/CERTIFICATE: Certificate 169157 – Lots 26 & 27, Plan 4286-A (Plate 9)

SUBJECT PROPERTY: 75 Philadelphia Street, Teaticket, MA
Map 39A, Section 09, Parcel 000, Lot 026

Under a date of October 11, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an addition and second floor to the pre-existing nonconforming one-story single-family dwelling (existing detached garage to be eliminated) on a parcel known as 75 Philadelphia Street in Teaticket, Massachusetts.

A public hearing was opened on December 4, 2014. 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.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Terrence Hurrie and Associate Mark Cool

Clerk Bielan read the Notice of Public Hearing into the record.

Peter Munro, Contractor/Agent, was present on behalf of the applicant and reviewed the existing site and the proposed additions to the existing dwelling. Mr. Munro informed the Board that the detached garage/shed structure was just recently demolished through a building permit as it was deemed unsafe [it was proposed to be demolished through this permit approval]. The applicant is proposing to construct an addition to the easterly façade of the existing dwelling and add a second floor over the central part of the dwelling. There are two bedrooms existing; one bedroom will be relocated to the second floor to allow for renovation of the first floor to increase kitchen and improve laundry area. The proposed second floor will have the one bedroom and a large storage area. (Note: The plans show only one bathroom in the dwelling as proposed.) He explained the lot coverage for the proposed will be a decrease in the nonconforming lot coverage with the removal of the detached garage/shed structure: lot coverage by structures will be reduced from 29.4% to 23% and the total lot coverage will be reduced from 44.8% to 38% - making the total coverage conforming. This will remain a two bedroom dwelling.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Board of Health Agent David Carignan states: The existing dwelling has two bedrooms according to the Assessor's records. The plans provided by the applicant show a two bedroom structure at the completion of the project, and the second detail shows a "new storage" room. This room would be considered a bedroom by the Health Department, thus triggering a review of the septic system capacity. No information is provided in the file to support the possibility that the existing system is adequate for an additional bedroom, nor has the applicant sought relief from the Board of Health in consideration of the fact that this property is in the proposed sewer extension area.

Referrals submitted by the Building Department and the Planning Department had no comment.

There were no letters submitted to the file in support or opposition of the proposed additions.

Board Questions:

Member Foreman asked Mr. Munro to review the lot coverage.

Mr. Munro explained with the removal of the garage/shed structure and the proposed additions lot coverage by structures is reduced from 29.4% to 23.85% and the total lot coverage is reduced from 44.8% to 38%.

Member Bielan asked if the structure demolished was a shed or a garage and are there any additional accessory structures proposed.

Mr. Munro said it was a garage and shed use and that there are no other accessory structures proposed on subject property.

Member Bielan asked if the second story addition will be setback further than the first story.

Mr. Munro stated it will be set back in from where the first floor is.

Chairman Haddad asked what the basement use is; if the dwelling was remaining a two bedroom structure and if there are any drywells.

Mr. Munro answered that there is a small area in the basement that is full height, but mainly all crawl space and the heating system in the basement is being upgraded; and the dwelling will remain a two-bedroom dwelling. Thomas Bunker of BSS Design stated that there are no drywells proposed but they can be added.

Chairman Haddad asked if this could be a three-bedroom dwelling once the Town sewage went in. Mr. Bunker stated yes.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Robert O'Brien of 53 Montauk Street stated the proposed is a nice design and he feels it will be an improvement and asked about the rear setbacks.

Mr. Bunker shown on the plan that the driveway is in the same location and the structure is 29' from the rear property line.

Member Foreman made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 5 - 0.

Chairman Haddad 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 75 Philadelphia Street in Teaticket contains 4,800 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to eliminate the existing detached garage/shed structure and construct an addition to the east side of the existing dwelling and construct a second floor. The structure is nonconforming with a front yard setback to Philadelphia Street of 2.7' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth and the westerly side yard setback is existing at 3.9', which requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 29.4% as Code of Falmouth allows 20% maximum in a residential zone under Section 240-69 A. that can be increased through a special permit up to 25% under Section 240-69 E. The existing dwelling is a two-bedroom dwelling and will remain a two-bedroom dwelling through this special permit.

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 elimination of the detached garage/shed structure and the proposed additions to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

The Board further finds that the proposed additions will not increase the existing nonconforming setbacks [front and side yard] or create any new nonconforming setback. Furthermore, the Board finds that the nonconforming lot coverage by structures and total lot coverage will be greatly improved [total lot coverage will be conforming] and more in keeping with the Town Code.

The Board finds through testimony of the applicant's representative that there will be no accessory structures located on subject property. The Board further finds through testimony of the applicant's land surveyor that the applicant would be amenable to adding drywells to subject property to insure that water runoff will be maintained on said property.

The Board finds through testimony and plans submitted that the dwelling will remain a two-bedroom dwelling through this special permit; and that there is a possibility that when the Town sewers in this neighborhood, a third bedroom may be added. Furthermore, the Board finds that the applicant will remove the door from the storage area on the second floor and create a 5' cased opening for the storage area [as the Board of Health referral stated it meets the requirements of a bedroom].

In addition to the above findings, the Board finds that the proposed removal of the detached garage/shed structure and proposed additions to the existing dwelling 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 additions to the dwelling as there will be no increase in the existing nonconforming setbacks and there will be no new nonconformities created on subject property.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since 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 site.
- 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 a two bedroom system by the Board of Health. It was noted that the neighborhood will be sewerred by the Town in the future and that a third bedroom may be created.
- 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 as there was no referral from the Water Department submitted to the file.
- G. The proposed dwelling additions 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.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Bielan 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 Linda J. Brown (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to allow the detached garage/shed structure to be removed, construct an addition to the easterly façade of the dwelling and construct a second floor to the existing dwelling located at 75 Philadelphia Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The removal of the detached garage/shed structure, additions to the dwelling, all setbacks, lot coverage and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Existing Site" – Plot Plan – Proposed Additions prepared for Peter Munro 75 Philadelphia Street

Falmouth, Massachusetts as drawn by BSS Design, Inc. dated October 3, 2014 with a Board date 'received' stamp of October 14, 2014;
- "Proposed Site" – Plot Plan – Proposed Additions prepared for Peter Munro 75 Philadelphia Street Falmouth, Massachusetts as drawn by BSS Design, Inc. dated October 3, 2014 with a Board date 'received' stamp of October 14, 2014; and
- "New Renovation For: Deborah & Linda Brown 75 Philadelphia Rd. Falmouth, MA" drawn by R & R Design of Sagamore, Beach, Massachusetts consisting of Drawing #'s C1 through C6 showing proposed floor plans and elevations and existing floor plan and elevations – all Drawings dated 8/25/2014 and with a Board date 'received' stamp of October 14, 2014.

2. There shall be no more than two bedrooms on subject property. It was discussed at the hearing that once the Town sewer is put in, the capability of adding a third bedroom would be possible.
3. The applicant shall submit a revised "Plot Plan" showing the location of drywells to be added to subject property to insure that water runoff will be maintained on said property. The revised plan shall be submitted to the Board of Appeals prior to issuance of a building permit.
4. The applicant shall submit a revised second floor plan of the proposed storage area showing a 5' cased opening to said storage area. The revised floor plan shall be submitted to the Board of Appeals prior to issuance of a building permit.
5. There shall be no accessory structures located on subject property.
6. 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.
7. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. This permit shall lapse two 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: 87-14

Applicant: LINDA J. BROWN of South Grafton, MA

Subject Property: 75 Philadelphia Street, Teaticket, MA
Map 39A, Section 09, Parcel 000, Lot 026

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.

David Haddad, Board Chairman

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.

Notes:

SP #87-14 Brown - 75 Philadelphia St / add'n & 2nd floor / posted 12/16/14 mm