

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 89-14

APPLICANT: RICHARD W. MACKIN, TRUSTEE & CLAUDIA MACKIN
of Watertown, MA

OWNER: Richard W. Mackin, Trustee – Mackin Realty Trust

DEED/CERTIFICATE: Certificate 143051, Lot 150 – Plan 11210-Q

SUBJECT PROPERTY: 12 Nichols Road, Waquoit, Massachusetts
Map 32, Section 21, Parcel 013A, Lot 150

Under a date of October 17, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to construct a first floor addition and construct a second floor to the pre-existing nonconforming single-family dwelling on subject property located at 12 Nichols Road, Waquoit, 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.

Michael Borselli a principal with Falmouth Engineering, Inc. was present on behalf of the applicant and reviewed the existing and proposed plans. The structure has a nonconforming setback to the southerly side yard property line of 9.5' and a 9.1' setback to the northerly side yard property line – both of which require a 10' setback according to code. He explained that the applicant would like to renovate the first floor of the dwelling and incorporate the existing garage into the footprint by constructing a small addition (12' x 15' approximately) at the front portion of the dwelling creating a new garage large enough to stack two cars [garage will be where a bedroom previously was located on first floor]. The three bedrooms currently existing on the first floor would be relocated to the proposed second floor space; the bedroom in the basement will be totally eliminated; the proposed dwelling will remain a three-bedroom dwelling. Mr. Borselli stated that he received a copy of the referral from the Board of Health and explained to the Board that a 'reserve area' may need to be shown on the plan and that he is in discussion with Mr. Carignan from the Board of Health. He also informed the Board that the project has been before the Conservation Commission and the hearing was closed and he is awaiting their approval.

Mr. Borselli reviewed the application under Section 240-216 and said he believes the project meets the criteria and the additions are in keeping with the integrity of the neighborhood and asked the Board for their approval.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Board of Health Agent David Carignan states: The proposed changes to the existing structure will not result in an increase in bedrooms, but a footprint change is proposed to the front of the building. The rear of the building faces the water and is unavailable for septic upgrades in a practical sense. The applicant should demonstrate that the addition at the front does not change conditions to the extent that a future septic upgrade would require otherwise avoidable variances to be granted in order to install the upgrade. In the case where variances without the addition would already be necessary to install a septic upgrade, then the applicant should demonstrate that the addition would not increase the number or magnitude of variances needed.

A referral submitted by the Engineering Department has standard comments that include the project must not direct any stormwater runoff to public property, abutters of the roadway.

Referrals submitted from the Building Department and the Planning Department have no comment.

There was no correspondence submitted to the file from abutters or interested parties in support or opposition of the proposed additions.

Board Questions:

Member Cool asked for clarification on Conservation Commission's approval.

Mr. Borselli explained that the hearing is closed and the applicant is waiting for issuance of an order, which will include a 'work limit area' on water side of dwelling, some native plantings for mitigation and drywells installed.

Member Foreman asked Mr. Borselli to summarize elevation changes in height of structure.

Mr. Borselli stated the dwelling is currently a one-story ranch style structure with attic space; the street side is approximately 16' in height – the new design brings the roof just under 25'. He said there is a walkout at rear so waterside height differential has a 19' increase and it would be 32.5' in height.

Chairman Haddad asked if the 'existing' driveway is paved and how long will it take to get an answer from the Board of Health regarding the referral.

Mr. Borselli stated that the 'existing' driveway is crushed stone – it is labeled incorrectly on the "Existing Conditions Plan" [change in total lot coverage]. Mr. Borselli stated that relative to the Board of Health, he would need to hire a septic inspector – so it could take a few weeks; but that he is hoping the Board can close this hearing contingent upon the Board of Health approval.

Chairman Haddad asked if the office space would be a bedroom.

Mr. Borselli said it is not a bedroom as it was designed not to meet the criteria of a bedroom.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was not public comment.

Board discussion:

Chairman Haddad said he would like to see what Conservation Commission says.

Member Cool said that the Board can condition the Conservation Commissions comments. He asked Mr. Borselli if the Health Agent wants an 'as-built' plan [for septic].

Mr. Borselli stated yes – if the system is upgraded someday they will still need the Variance from the Board of Health.

Member Bielan made a motion to close the hearing. Member Cool 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 12 Nichols Road in Waquoit contains 15,300 square feet of Residential C zoned land that is located within the Head of Waquoit Bay Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition to the northeasterly front

corner of the existing structure [garage enlargement] and to construct a second floor addition to said dwelling. The dwelling on subject property has a nonconforming setback to the southwesterly side yard property line of 9.5' and a nonconforming setback to the northeasterly side yard property line of 9.1' – both require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth. The existing floor plans show a four-bedroom structure; one of the bedrooms is located in the basement area. The proposed plans show three bedrooms on the second floor with no bedrooms in the basement or on the first floor – thereby reducing the bedroom count to three (3) through the proposed plans. The existing garage space off the rear of the dwelling [walk out basement] is accessible from rear water area – not vehicular access. The proposed garage on the first level will be created through a 12.1' x 15.8' addition – extending a small area of the existing dwelling at the front left corner of the structure to create a garage space to 'stack' and stage two vehicles; some of this space was from an existing bedroom on the first floor that is being relocated to the second floor – as are the other two bedrooms on the first floor. The interior of the dwelling will be renovated through the additions discussed herein. There will be no increase in the existing nonconforming setbacks through the proposed plans; the lot coverage will be slightly increased but will remain below the maximum allowed in this residential district; and there will be no new nonconformities created through this proposal.

Section 240-3 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 proposed additions to the pre-existing nonconforming single-family dwelling is not substantially more detrimental than what currently exists. The Board finds that the additions to the dwelling structure will be an enhancement to the utilization of the dwelling for the family members. Furthermore, the Board finds that there will be no adverse impact to the neighborhood as the additions appear to be in keeping with the neighborhood character.

The Board finds that there will be no new conformities through the proposed plans, nor will there be any increase to the nonconforming side yard setbacks noted herein. The Board further finds through testimony given, there will be no bedrooms or sleeping accommodations created within the basement space of the subject structure. Furthermore, the Board finds that there will be three (3) bedrooms within the single-family dwelling as represented and discussed herein.

The Board finds that the applicant's representative gave testimony that the application has been through the Conservation Commission and they are awaiting decision. The Board further finds that there is correspondence from the Conservation Commission to the Board of Appeals stated that the Conservation Commission approved the project on November 12, 2014 and an Order of Conditions will be forwarded to the Board of Appeals when drafted.

The Board finds through testimony of the applicant's representative that the "Existing Conditions Plan" dated September 22, 2014 incorrectly labeled the driveway as 'paved'. The Board further finds that the "Plot Plan" for the proposed changes does accurately reflect the driveway being paved as that is the intent of the applicant; and the applicant's representative will submit a revised "Existing Conditions Plan" to the Board of Appeals with accurate lot coverage.

The Board finds through testimony of the applicant's representative that he understands the Board of Health Referral [noted above] and is working with the Board of Health Agent to get plan approved, which is required prior to issuance of a building permit. The Board further finds that the application was approved by the Conservation Commission and an 'Order of Conditions' will be forwarded to the Board of Appeals.

The Board finds that the proposed first floor plans on Drawing A2 of the architectural plans submitted show an "Office" area with a 6' opening so that the space does not meet the criteria of a bedroom; the 6' opening will be maintained as stated by applicant's representative. The Board finds that the height of the dwelling with the second floor from the mean grade off Nichols Road will be 24' 10" which is below the 35' maximum allowed pursuant to Section 240-70 of the Code of Falmouth [the rear elevation with the second floor addition will be 32' 5"].

The Board finds that the dwelling on subject property will be maintained as a three bedroom dwelling with no bedrooms or sleeping accommodations located in the basement area.

In addition to the above findings, the Board finds that the proposed additions to the pre-existing nonconforming 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 ground level addition and a second floor addition as there is no increase to the existing nonconforming setbacks [at both side yard property lines] and there are no new nonconformities proposed through this application.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception; the subject dwelling is a single-family dwelling and will remain as such through this special permit.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the 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; 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 the applicant's representative/engineer will be working with the Board of Health regarding referral submitted to this file. A building permit cannot be issued without sign off from the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant should contact the Town Water Department regarding updating of water system as there was no referral submitted from the Water Department.
- G. The proposed dwelling reconstruction 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 Bielan made a motion to Grant the Special Permit with conditions. Member Cool 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 Richard W. and Claudia Mackin (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a ground level addition and a second floor to the pre-existing nonconforming single-family dwelling on subject property located at 12 Nichols Road, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the additions to the existing single-family dwelling, setbacks, lot coverage, height of proposed second floor and use of said dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #12 Nichols Road" [proposed plan] prepared for Claudia & Richard in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated September 22, 2014 with a Board date 'received' stamp of October 17, 2014;
- "Addition/Renovation Design Mackin Residence 12 Nichols Road East Falmouth, MA" architectural plans drawn by Architecture SPB consisting of Drawings A1 through A3, dated 10/14/2014 and with a Board date 'received' stamp of October 17, 2014.

2. The "Existing Conditions Plan for #12 Nichols Road" prepared for Claudia & Richard Mackin in Falmouth, MA – drawn by Falmouth Engineering, Inc., dated September 22, 2014 shall be revised to accurately reflect the total lot coverage due to the driveway currently being gravel and not 'paved'. The revised plan shall be submitted to the Board of Appeals prior to the issuance of a building permit.

3. The applicant shall submit an 'as-built' plan to the Board of Appeals prior to the final sign off of the project by the Board of Appeals Zoning Administrator.

4. The 'Office' shown on Drawing A1 shall maintain the 6' cased opening as shown on the plan so as not to be considered a bedroom.

- 5. The applicant's engineer [representative at the hearing] shall work with the Board of Health regarding their concern stated on the referral submitted to the file. This Special Permit shall be contingent on the approval by the Board of Health.
- 6. The Board of Appeals herein adopts the 'Order of Conditions' issued by the Conservation Commission for subject property and project represented herein.
- 7. 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.
- 8. The Applicant shall meet the requirements of the DPW Water Division.
- 9. 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.)
- 10. 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: 89-14

Applicant: RICHARD W. MACKIN & CLAUDIA MACKIN
of Watertown, MA

Subject Property: 12 Nichols Road, Waquoit, Massachusetts
Map 32, Section 21, Parcel 013A, Lot 150

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 Bielan, Board 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.

Notes:

SP #89-14 Mackin - 12 Nichols Rd / add'n and 2nd floor / posted 12/17/14 mm