

Zoning Board of Appeals Decisions Decisions for: 10-02-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 75-14

APPLICANT/OWNER: JILL PARK of Montross, VA

DEED/CERTIFICATE: Certificate 204285 – Lot 14, Plan 17806-B

SUBJECT PROPERTY: 6 Pondlet Place, Falmouth, Massachusetts
Map 47, Section 02, Parcel 007, Lot 014

Under a date of August 21, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-68 A. (8) of the Code of Falmouth to construct a one-car garage with living space on second floor in the front yard no closer than 50' to the property line and to covert a shed attached to the dwelling into an interior closet for the dwelling located at 6 Pondlet Place, Falmouth, Massachusetts.

A public hearing was opened on October 2, 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, Member Matthew McNamara and Associate Mark Cool

Acting Clerk McNamara read the Notice of Public Hearing into the record.

Attorney Robert H. Ament of Ament Law Firm was present on behalf of the applicant, who was also present. Attorney Ament explained that the application is to allow a one-car garage to be constructed in the front yard no closer than 50' to the property line and to convert an existing shed attached to the dwelling into a closet within the dwelling. He submitted pictures of the shed and explained that the height of the shed would be increased to better utilize the space it will create within the dwelling. Attorney Ament stated that Ms. Park just recently purchased the property and would like to have a one-car garage with space above to be used as her sewing room. The proposed one-car, 16' x 24' garage will be 51' from the front property line and have an outside shower attached at the rear of the garage. The height of the garage structure will have a height of less than 18' as required. The second level to be used as her sewing room will meet the criteria of a bedroom so the proposed four bedroom septic system shown on the plan submitted will be upgraded to a five bedroom system. Attorney Ament noted a decorative trellis at the front of the garage structure – approximately 25' from the front property line that is considered landscaping.

Attorney Ament submitted a new plan that shows a correction to note 4 – correcting the flood zone elevation from 12 to 13. He informed the Board that the application is subject to Conservation Commission approval and there will be a mitigation planting plan submitted to the Conservation Commission as well. The septic system will be 100' from the Coastal Bank.

Attorney Ament noted that there is a letter of support from abutter to the east of subject property [Mr. /Mrs. Zaltas] and that the applicant has spoken with two other neighbors who had no objection to the proposed plan.

Clerk McNamara read the Town Department referrals into the record.

The Engineering Department submitted its standard comments regarding in change in the driveway requires application to the appropriate department and that the project must not direct any stormwater runoff to any public property, abutters or right of ways.

Referrals were submitted from the Building Department and the Planning Department that had no comment.

Clerk McNamara read an e-mail to the Zoning Administrator from the Board of Health Agent David Carignan that noted the living space above the proposed garage appears to meet the criteria of a bedroom and that there are four bedrooms in the dwelling existing and the proposed septic system for four bedrooms will not be adequate for plans.

Clerk McNamara noted the letter of support from abutters Brenda and Arnold Zaltas of 4 Pondlet Place.

Board Questions:

Member Foreman asked if the garage is heated.

Attorney Ament stated that only the second floor will be heated.

Member McNamara asked about lot coverage – the plan does not show existing lot coverages – only proposed. He asked if the total lot coverage figure of 15.6% included parking for two vehicles.

Mr. Borselli said that two cars at 9' x 18' would increase the total lot coverage to approximately 17.9%.

Member McNamara questioned why the applicant is seeking Board of Appeals approval prior to Conservation Commission approval.

Attorney Ament stated that application to the Conservation Commission will involve a lot of vegetative improvements. He explained that the engineer [Borselli] has met with the Administrator for Conservation. Attorney Ament read from Chapter 131, section 40 regarding a 'Notice of Intent': No such notices shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances and approvals;....

Member McNamara asked if the sewing room will be used for sleeping.

Attorney Ament stated that is not the intent but it meets the CMR criteria of a bedroom.

Chairman Haddad asked if there will be separate utilities for the garage structure and what will the height of the garage be.

Attorney Ament stated that there is one account for utilities and that the garage height [shown on the plan] is 17'11".

Chairman Haddad asked if the applicant intended to ever rent the garage and if there will be any cooking facilities.

Attorney Ament stated that the applicant does not intend to rent the garage structure and there will not be any cooking facilities within the garage structure.

Administrator Budrow suggested that if the Board approves the project to condition that the Building Commissioner make a determination of whether the trellis is landscaping or a structure in the front yard.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member Foreman made a motion to close the hearing. Member Cool seconded the motion. Motion carried 4 – 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 6 Pondlet Place in Falmouth contains 15,000 square feet of Residential B zoned land that is located within the Salt Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to convert a shed attached to the pre-existing nonconforming dwelling into a closet within the dwelling; and Section 240-68 A. (8) of the Code of Falmouth to construct a one-car garage with living space above in the front yard 51' from the front property line. The existing single-family dwelling on subject property has a nonconforming setback of 8.1' to the westerly side property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage existing and proposed is below the maximum percentage allowed in Section 240-69 A. of the Code of Falmouth. The proposed one-car garage will not exceed the height of an accessory structure pursuant to Section 240-70 of the Code of Falmouth. There will be habitable space created on the second level of the garage structure that the applicant intends to use as a sewing room. The second level of the garage, according to plans submitted and drawn by William F. Roslansky Architect, is half the size at 192 square feet of the garage space that is 384 square feet as required under Section 240-70 of the Code of Falmouth [...accessory structures is 1 ½ stories, not to exceed 18 feet as measured from the base of the structure to the highest point...]

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 proposed plan to convert the existing shed attached to the northwest corner of the dwelling in a closet to be used within said dwelling is not substantially more detrimental than what currently exists. The Board further finds that the attached shed structure will be increased in height to create a more useable space within the dwelling.

Section 240-68 A. (8) of the Code of Falmouth allows the Board of Appeals to grant a special permit for an accessory structure in a front yard that will be no closer than 50' to the front property line of subject property.

The Board finds that the proposed one-car 1 ½ story accessory garage structure will be 51' from the front property line as shown on the plan submitted for Board's review and noted in condition 1 below. The Board further finds that the accessory garage structure proposed will have habitable space on the second level and that said space meets the criteria of a bedroom. Furthermore, testimony by the applicant insured the Board that there is no intent to rent the habitable space above the garage and there is no intent to have any cooking facilities within the accessory garage structure.

The Board finds through correspondence from the Board of Health that the habitable space on the second level of the accessory garage structure proposed meets the criteria of a bedroom and that the septic system reviewed by the Board of Health for subject property was a four bedroom system. The Board further finds that the applicant's representative gave testimony that the septic system will be revised to show a five bedroom septic system as there are four bedrooms within the dwelling and now the habitable space in the garage structure. Furthermore, the Board finds that the applicant's representative will have a revised plan showing a five bedroom septic system submitted to the Board of Appeals prior to issuance of a building permit.

The Board finds that the proposed accessory garage structure will have a height of 17'11" – not exceeding the height limit set forth in Section 240-70 of the Code of Falmouth.

The Board finds that the applicant is proposing a trellis in the front yard 25' [approximately] from the front property line. The Board further finds that the applicant will have the Building Commissioner review the proposed trellis to determine if it is landscaping or a structure. In the event the Building Commissioner determines it is a structure, the applicant will be required to apply to the Board for a Variance.

The Board finds through testimony of the applicant's representative that the application will be submitted to the Conservation Commission under a 'Notice of Intent' filing. The Board further finds through testimony of the applicant's representative that the principal dwelling on subject property has four bedrooms and the use of this four bedroom dwelling will not be changed through approval.

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 accessory one-car garage structure as there is no increase in the existing nonconforming setback and there is no new nonconformity through the proposed construction.
- 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 does not appear to be a change in the location of the driveway and although there is proposed habitable space above the proposed accessory garage structure, the applicant's testimony was that there is no intent to create sleeping accommodations in said space.
- D. The visual character of the subject property may be improved and there does not appear to be any impact on the neighborhood's visual character; and there does not appear to be any impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system, according to applicant's representative, will be upgraded to a five bedroom septic system that will be signed off by the Board of Health prior to issuance of a building permit.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant may have to contact the Town Water Department regarding updating of water system as there was no referral submitted to this Board from the Water Department.
- G. The proposed accessory garage structure 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 McNamara 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 4 – 0 to Grant the Special Permit to Jill Park (herein referred to as Applicant) under Section(s) 240-3 C. and 240-68 A. (8) of the Code of Falmouth to construct a one-car garage in a front yard and convert existing shed to interior closet that is attached to the existing single-family dwelling on subject property known as 6 Pondlet Place, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The shed conversion attached to dwelling, construction of the one-car detached garage, height of the proposed garage, all setbacks, lot coverage, septic system and use of the accessory garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #6 Pondlet Place" prepared for Jill Park in Falmouth, MA – Sheet 1 of 2 drawn by Falmouth Engineering, Inc. with a final revision date of 10/2/14 and with a Board date 'received' stamp of October 2, 2014. NOTE: This plan shall be revised showing accurate lot coverage figures and submitted to the Board of Appeals prior to issuance of a Building Permit.

- "Park Addition" architectural drawings by William F. Roslansky dated 8/21/2014 consisting of Title Page and Drawings A1 through A3 all with a Board date 'received' stamp of August 21, 2014

2. The Engineer shall submit revised drawings of "Septic System Details for #6 Pondlet Place" – Sheet 2 of 2 showing a five bedroom septic system plan (plan in file currently shows four bedroom system dated June 29, 2014).

3. There shall be no cooking facilities of any kind within the accessory garage structure approved herein. This shall include, but not be limited to an oven, a stove, a microwave oven, a toaster oven, a hot plate or any other appliance that prepares food.

4. The accessory garage structure approved herein shall not be rented separately from the principal dwelling on subject property. The accessory garage structure approved herein shall remain accessory to

the principal dwelling.

5. The applicant shall meet with the Building Commissioner to get a determination, in writing, on whether the trellis in the front yard of subject property is landscaping or a structure. If it is determined to be landscaping, then the applicant shall submit the letter to the Board of Appeals prior to issuance of a building permit. If the determination is that it is a structure, the applicant, if they desire to keep the trellis on the plan, will be required to file an application for a Variance with the Board of Appeals.

6. The applicant shall submit, prior to the issuance of a building permit, approval of the project by the Conservation Commission for the proposed accessory garage structure.

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: 75-14

Applicant: JILL PARK of Montross, VA

Subject Property: 6 Pondlet Place, Falmouth, Massachusetts
Map 47, Section 02, Parcel 007, Lot 014

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

Vote: 4 – 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, Chairman, Board of Appeals

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# 75-14 Park - 6 Pondlet Place / Garage in Front Yard posted 10/14/14 mm