

Zoning Board of Appeals Decisions Decisions for: 09-11-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 45-14

APPLICANT/OWNER: PATRICK MACDONALD and NANCY MACDONALD
of Ashland, MA

DEED/CERTIFICATE: Book 23016 / Page 225

SUBJECT PROPERTY: 48 Winthrop Drive, Waquoit, Massachusetts
Map 41, Section 03, Parcel 000K, Lot 086

Under a date of May 27, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition to increase living space at the rear of the pre-existing nonconforming single-family dwelling on subject property located at 48 Winthrop Drive, Waquoit, Massachusetts.

A public hearing was held on July 24, 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. Testimony and public comment was given at the July 24, 2014 hearing. The Board requested from the applicant clarification on the plan and accurate number of bedrooms on subject property at this hearing; with a motion made, seconded and unanimous vote of the Board, the hearing was continued to September 4, 2014 at 6:30 PM

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara, Member Patricia Johnson

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

Thomas J. Bunker, PLS with BSS Design, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition to the one-story single-family dwelling on subject property. He stated the current lot coverage of 17.9% is conforming. The existing two-bedroom one-story dwelling has a nonconforming setback to the easterly side yard property line of 8.5 [requires 10' setback]. The applicant proposes to remove an existing deck at the rear of the dwelling and construct an addition that will create a second bathroom, a family room and a bedroom. The lot coverage for structures will be increased, exceeding the 20% maximum, to 22.13%. Mr. Bunker stated he had submitted GIS map of area homes showing the 'build ratio' and 'lot coverage ratio' for the Board's review. The map and charts submitted show comparison of proposed addition on subject property to those in the neighborhood regarding bulk and lot coverage.

Mr. Bunker explained that the Health Department had signed off on the original plan, but the applicant had revised the plans since then and submitted a new plan showing a third bedroom [not in original plan] where the office was proposed; and with the existing den, it could be considered a fourth bedroom. He said he would work with the applicant and the Board of Health to resolve the issue.

Clerk Bielan read the Town Department referrals into the record.

A referral was submitted from the engineering department with standard concerns regarding no stormwater runoff in public property or right of ways; and any alteration to utilities would require filing with appropriate Town department.

A referral submitted from the Board of Health Agent Scott McGann states: As long as the addition is on posts there are no setback issues with the project. A variance would be required for any other type of foundation.

Referrals submitted by the Building Department, Planning Department and Water Department had no

comment.

Board Questions:

Member Foreman asked about the use of the 'den' noted on the plan and lot coverage difference on plot plan.

Mr. Bunker stated that the den would be considered a fourth bedroom [meets the criteria] unless it has a cased opening; and the difference from the original plot plan submitted in May to the one revised in July is the front step – it was not calculated in lot coverage on previous plan.

Member Bielan asked Mr. Bunker to confirm addition constructed on posts with no basement; that there will be no increase in existing shed or an additional accessory structure; and if a deck will be constructed.

Mr. Bunker confirmed that the addition will be constructed on sonotubes with no basement; that there is no intent to increase existing shed or add another accessory structure; and that a deck is not proposed but that the applicant could put in a patio as that would be calculated in total lot coverage.

Member Cool asked if the existing basement is finished and what is it used for.

Mr. Bunker stated there is a basement that is unfinished and used for storage and utilities.

Member McNamara asked if Mr. Bunker knew what the variance request was for in 1975 that was denied.

Mr. Bunker stated he did not know but would find out.

Chairman Haddad asked what the proposed height of the addition is; will it be visible from the roadway; and is the dwelling now a 3 or a 4 bedroom dwelling.

Mr. Bunker stated that the addition is approximately 20' in height; the addition will not be seen from the roadway; and that the existing septic system is for three bedrooms and he will review with the Board of Health and get information back to the Board.

Member Foreman commented that the hearing will need to be continued to get further information on the bedroom count and possible revised plans.

Member Foreman made a motion to continue the hearing to September 4, 2014 at 6:30 PM. Member Johnson seconded the motion. Motion carried unanimously.

Board voted 5 – 0 to continue the hearing to September 4, 2014 at 6:30 PM.

Continuation: September 4, 2014 – 6:30 PM – Selectmen's Meeting Room

#45-14 – MacDonald, 48 Winthrop Dr., Waquoit, MA
Map41, Section 03, Parcel 000K, Lot 086

Voting Board Members: Chairman David Haddad, Vice Chair Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara and Member Patricia Johnson

Clerk Bielan read into the record correspondence from applicant's representative requesting a continuation to September 11, 2014 as discussions with Board of Health are ongoing.

Member Foreman made a motion to continue the hearing to September 11, 2014. Member McNamara seconded the motion. Motion carried 5 – 0.

Continuation: September 11, 2014 – 6:30 PM – Selectmen's Meeting Room

Members sitting: Chairman Haddad, Vice Chair Foreman, Clerk Bielan, Member McNamara and Member

Johnson

Thomas J. Bunker, PLS with BSS Design, Inc. was present on behalf of the applicant and reviewed briefly the plans that were before the Board at previous hearing; the first hearing showed an additional bedroom in the proposed addition – revised plans show an office and family room. He explained that the “Plot Plan – Proposed Addition” was revised to show a reserve area for septic upgrade that the Board of Health required. Mr. Bunker also explained that the Variance denied by the Board of Appeals in 1975 was for a variance to create an addition at the side of the dwelling within the 10’ setback. If the addition then was constructed in line with the property line angle then there would not be a nonconforming setback – but the property line is at an angle and the building construction was not compensated for the angle.

Mr. Bunker reviewed the calculations that he revised for bulk of structure that he had previously submitted in his Table of Calculations regarding lot coverage increase.

Member Foreman asked if there was basement proposed under new construction.

Mr. Bunker stated no – basement under existing dwelling for utilities and storage – it is unfinished.

Member McNamara asked if there was an intent to increase the height of the structure.

Mr. Bunker stated no.

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

Member McNamara made a motion to close the hearing. Member Bielan 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 48 Winthrop Drive in Waquoit contains 7,884 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The subject property was denied a Variance in 1975 to encroach on a side yard setback. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition to the rear of the pre-existing nonconforming two-bedroom, single-story dwelling that will increase lot coverage by structure over the 20% maximum allowed in a residential district pursuant to Section 240-69 A. of the Code of Falmouth. The existing dwelling has a nonconforming setback of 8.5’ from the easterly side yard setback that requires a 10’ setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures exists at 17.91% and is in compliance with Section 240-69 A. of the Code of Falmouth. In 2008 the applicant upgraded the septic system to a three bedroom capacity according to testimony at the hearing, which was corroborated by the Board of Health [see e-mail from David Carignan, Health Agent, and dated September 11, 2014]. The addition to the nonconforming dwelling will create a family room, office and bathroom. The bedroom count will remain at three. The plan submitted shows two bedrooms and a den – the den meets the requirement of a bedroom according to CMR Regulations and therefore the current bedroom count is three (3). The addition proposed herein will increase the lot coverage by structures to 22.13%, which exceeds the 20% maximum allowed by right in a residential district. However, the applicant applied for relief under Section 240-69 E. of the Code of Falmouth that allows the Board to approve an increase up to 25% based on the size and height of the structure as compared to the average size and height of structures in the neighborhood, any effect of shadow on adjacent property, any impact on views or vistas from public ways and any effect of nitrogen on a coastal embayment.

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 addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists as the addition creating a family room, office and bathroom as at the rear of the property and not visible from roadway. The Board further finds that the addition does not impact the existing nonconforming setback, nor does it create a new nonconforming setback.

The Board finds that the addition to the existing dwelling will be an enhancement of utilization of the dwelling for the residents.

The Board finds through testimony by the applicant's representative that there is no intention to construct a second story to the pre-existing nonconforming dwelling and/or the addition to said dwelling approved herein. The Board further finds that any addition creating a second floor, addition at ground level or adding an accessory structure to the subject property will require application to the Board of Appeals.

Section 240-69 E. of the Code of Falmouth allows the Board to approve an increase in lot coverage by structures after consideration is made of any effect on neighbors, views and nitrogen effect on a coastal embayment.

The Board finds that after consideration of the criteria in Section 240-69 E. of the Code of Falmouth the proposed addition's size and height is the same as the existing dwelling with no effect on bulk as it will be constructed at the rear of the existing dwelling and is not visible from the public way. The Board further finds that there is no effect of shadowing on the adjacent lots from the proposed addition and there is no effect of nitrogen on any coastal embayment.

The Board finds that the Board of Health confirms that the existing septic system has the capacity for three bedrooms on subject property. The Board further finds that the Board of Health approves the plan showing a reserve area for upgrade of system in the event it is necessary.

The Board finds through testimony by the applicant's representative that there will be no basement under the proposed addition. The Board further finds through testimony of the applicant's representative that there is an unfinished basement under the existing dwelling that is used for utilities and storage.

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 addition as there is no impact on existing nonconforming setback and no creation of a new nonconforming setback.
- 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 unchanged as the addition is in the rear of the existing dwelling and not visible from the public roadway.
- E. The sewage disposal system is in place and signed off as a three (3) bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition to the existing dwelling 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 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 5 – 0 to Grant the Special Permit to Patrick and Nancy MacDonald (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition to the rear of the pre-existing nonconforming single-family dwelling

located at 48 Winthrop Drive, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The addition to the pre-existing nonconforming single-family dwelling, all setbacks, height of addition, lot coverage and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan – Existing House" prepared for Patrick MacDonald 48 Winthrop Drive East Falmouth, Massachusetts, drawn by BSS Design, Inc. dated May 6, 2014 – revised on July 22, 2014 and with a Board date 'received' stamp of August 28, 2014;
 - "Plot Plan – Proposed Addition" prepared for Patrick MacDonald 48 Winthrop Drive East Falmouth, Massachusetts, drawn by BSS Design, Inc. dated May 16, 2014 with final revision date of September 7, 2014 and with a Board date 'received' stamp of September 8, 2014;
 - "Sketch Plan of Basement" prepared for Patrick MacDonald 48 Winthrop Drive East Falmouth, Massachusetts, drawn by BSS Design, Inc. dated July 22, 2014 and with a Board date 'received' stamp of August 28, 2014; and
 - "Addition Design MacDonald Residence 48 Winthrop Drive East Falmouth, MA" architectural plans drawn by Architecture by SPB consisting of Drawings A1 through A3 dated July 29, 2014 and with a Board date 'received' stamp of August 28, 2014.
2. There shall be no more than three bedrooms on subject property.
3. The lot coverage by structures shall not exceed the lot coverage of 22.13% that is shown on the "Plot Plan" noted in Condition 1 above.
4. The proposed 'office' shown architectural drawing A2 noted in Condition 1 above shall maintain the 5' 2 ½" cased opening as shown on the plan. There shall not be any type of door or closure installed at the entrance of this space.
5. There shall not be any additional accessory structures added to the subject property. There is an existing shed (8' x 10' as scaled on plan) shown in the northeast corner of the property. Administrative approval shall be required to replace this shed.
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. 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 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: 45-14

Applicant: PATRICK MACDONALD and NANCY MACDONALD

Subject Property: 48 Winthrop Drive, Waquoit, Massachusetts
Map 41, Section 03, Parcel 000K, Lot 086

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 #45-14 MacDonald - 48 Winthrop Dr., Waquoit / Addition posted 9/19/14 mm