

Zoning Board of Appeals Decisions Decisions for: 07-17-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 49-14

APPLICANT: ROBERT J. PERETTI of North Easton, MA

OWNER(S): Robert J. Peretti and Kimberly A. Peretti

DEED/CERTIFICATE: Book 27753 / Page 271

SUBJECT PROPERTY: 31 Arlington Street, North Falmouth, MA
Map 04A, Section 10, Parcel 000, Lot 125

Under a date of June 3, 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 an addition creating a master bedroom for the pre-existing nonconforming single-family dwelling on subject property located at 31 Arlington Street, North Falmouth, Massachusetts.

A public hearing was held on July 17, 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, Clerk Kimberly Bielan, Member Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

Ken Costa, Contractor, was present on behalf of the applicant and reviewed the existing site and the proposed 14' x 14' addition to the south side of the pre-existing nonconforming single-family dwelling on subject property. Mr. Costa stated that they are renovating one bedroom at the southwest corner of the dwelling into a full second bathroom. He stated that the 14' x 14' addition will be constructed on sonotubes; and that the lot coverage was maintained below the 20% maximum allowed by structures.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Board of Health Agent states: On sewer for New Silver Beach.

A referral submitted by the Engineering Department had standard comments regarding right of ways and stormwater runoff.

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

Member McNamara asked the applicant to explain the existing nonconformities.

Mr. Costa reviewed the nonconforming front yard setback of 16.7' that requires a 25' setback. Zoning Administrator Budrow noted that the setback is not shown from the front steps which is part of the structure (main egress) and should be revised as a condition if the Board approves the project.

The Board questioned if there is a basement and what it is used for.

Mr. Costa stated the basement is unfinished and will remain unfinished.

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 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 31 Arlington Street contains 6,672 square feet of Residential C zoned land that is located in the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a 14' x 14' addition to create a new master bedroom for the nonconforming single-family dwelling. The dwelling currently has three bedrooms; one of which will be converted to a full bathroom – thus the dwelling will remain a three bedroom dwelling. The addition does not impact the existing nonconforming setback at the front of the dwelling that is less than 25' as required pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth.

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 14' x 14' addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the addition to create a master bedroom and conversion of one of the bedrooms into a full bathroom will be an enhancement in the utilization of the dwelling by its residents. Furthermore, the Board finds that the addition will not adversely impact the existing nonconforming front yard setback; nor will it create any new nonconformities on site.

The Board finds that the basement is unfinished and will remain unfinished through this special permit. The Board further finds that the dwelling discussed and represented herein will remain a three bedroom dwelling.

The Board finds that the plans did not note the elevation of the dwelling and addition and the existing floor plan did not have rooms labeled. The Board further finds that the front yard setback is not shown from the front steps (main egress). Furthermore, the Board finds that a requirement of approval will be to submit, prior to issuance of a building permit, revised elevations noting height, existing floor with labeled rooms, and the plot plan showing accurate front yard setback.

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 14' x 14' addition as it will not increase existing nonconformity or create any new nonconformity.
- 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 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 dwelling is attached to the Town sewer (Board of Health referral).
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition to the 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 Cool 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 Robert J. Peretti (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a 14' x 14' addition to the pre-existing nonconforming single-family dwelling on subject property located at 31 Arlington Street, North Falmouth, MA as represented herein. This special permit is subject to the following conditions:

1. The 14' x 14' addition to the dwelling and its location on site, all setbacks, lot coverage and use of the addition and dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Addition" for 31 Arlington Street, Falmouth, Mass dated 12/15/2013 – revised date of 6/17/2014 – as drawn by Warwick & Associates Inc. and with a Board date 'received' stamp of June 17, 2014; and

- Computer generated architectural plans on Drawings A1 'Floor Plan' dated January 14, 2014, Drawing A2 'Wall Section Elevations' dated January 14, 2014, Drawing A3 'Floor Joist Plan' dated January 14, 2014 and A4 'Rafter Frame Plan' dated January 14, 2014 – all with a Board 'received' stamp of June 3, 2014.

2. The "Plot Plan" noted in condition 1 above shall be revised showing accurate front yard setback from the front steps at the main egress to the property line off Arlington Street. The revised "Plot Plan" shall be submitted to the Board of Appeals prior to the issuance of a building permit.

3. The applicant shall revise elevation plans noting height of dwelling and addition and existing floor plans labeling the rooms. These revised plans shall be submitted to the Board prior to issuance of a building permit.

4. There shall be no more than three (3) bedrooms allowed on subject property.

5. There shall be no bedroom(s) or sleeping accommodations created within the basement area of the dwelling.

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: 49-14

Applicant: ROBERT J. PERETTI of North Easton, MA

Subject Property: 31 Arlington Street, North Falmouth, MA
Map 04A, Section 10, Parcel 000, Lot 125

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 #49-14 Peretti / 31 Arlington St., N. Falmouth / master bdrm add'n posted to web 7/24/14 mm