

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 48-14

APPLICANT/OWNER: ROBERT J. RILEY and MARY A. RILEY of Needham, MA

DEED/CERTIFICATE: Book 22143 / Page 194

SUBJECT PROPERTY: 23 East Avenue, North Falmouth, MA  
Map 04A, Section 06, Parcel 000, Lot 041

Under a date of June 3, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 3 and 240-69 E. of the Code of Falmouth to remove existing deck and stairs, replace it with a porch and construct an addition at the rear of the pre-existing nonconforming single-family dwelling on subject property located at 23 East Avenue, 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.

Thomas J. Bunker, P.L.S. with BSS Design, Inc. was present on behalf of the applicant and reviewed existing site and proposed addition and alteration. Mr. Bunker explained that the plans were revised to not exceed the 20% maximum by structures – plans were submitted to the Board on July 3, 2014. The plan is to remove existing front deck and stairs extending toward East Avenue and reconstruct a covered porch with stairs exiting towards the northeast side property line thus lessening the nonconforming front setback from 10.2' to 15.8'. The applicant is also proposing to construct an addition at the northwesterly rear corner of the dwelling that will be two-stories that will allow the attic to become habitable space to relocate two bedrooms from the first floor to the proposed second floor and add a full bathroom and sitting room as well to the second floor. On the first floor what was bedroom #1 will become a bathroom and laundry room; bedroom #2 will become an office with a cased opening (door removed); and bedroom #3 will become a master bedroom and bathroom through the addition and renovation. Mr. Bunker explained that there is and will remain three bedrooms within this dwelling. The elevation will be 29' from mean grade and the basement will remain unfinished [it has a dirt floor] and used for storage.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted from the Board of Health states: On sewer – no issues.

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

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

Clerk Bielan noted correspondence from the Conservation Commission stating: The Conservation Commission reviewed the application for 23 East Avenue at last night's meeting. The hearing was closed and the Administrator fully expects to issue a favorable decision. If you have any questions or need further comment please let me know. E-mail dated July 17, 2014 from Melanie Mathews Administrative Assistant.

Chairman Haddad asked about the patio that appears to encroach over into the rear abutter's property.

Mr. Bunker stated there is an agreement in place between the parties.

Administrator Budrow asked for clarification that the dirt floor in the basement will remain and not have slab poured or other flooring put in.

Mr. Bunker stated that is correct.

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

Member Bielan made a motion to close the hearing. Member McNamara 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 23 East Avenue in North Falmouth contains 3,640 square feet of Residential C zoned land located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to change existing front deck entrance into a covered porch and to construct an addition to the northwest corner of the dwelling, up two-stories that will renovate the attic space into additional habitable space. The applicant revised the plans so as not to exceed the 20% maximum lot coverage by structures and thereby eliminating the need for review under Section 240-69 E. of the Code of Falmouth. The dwelling structure has nonconforming setbacks to the rear property line and the front property line. The proposed plan is to remove existing front deck and steps and replace with a covered porch that will improve the front yard setback of 10.2' to 15.8'. The addition of habitable space on the second floor will allow the applicant to relocate two of the bedrooms to the second floor and create a bathroom and sitting room, while the evacuated space on first level will be renovated into a bathroom and laundry in one space and a cased-open office space in the other. The proposed does not create any new nonconforming setback and will improve the existing nonconforming front setback. The nonconforming 7.2' setback from the deck to the rear property line remains unchanged. The basement is unfinished with a dirt floor and is used for storage – no change in use planned.

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.

Section 240-69 E. of the Code of Falmouth [Lot Coverage] is eliminated from the application as the lot coverage by structures will be maintained below the 20% maximum allowed in a residential district.

The Board finds that the proposed change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

The Board finds that the proposed reconstruction of the front deck into a covered porch will be an improvement to the nonconforming front yard setback. The Board further finds that the addition at the northwest corner of the dwelling and second floor addition does not increase either of the nonconforming setbacks, nor does it create any new nonconformity. Furthermore, the Board finds that the addition to the dwelling adding more habitable space on the second floor is an enhancement to the utilization of the dwelling by family members.

The Board finds through testimony of the applicant's representative that the existing basement is unfinished and has a dirt floor. The Board further finds through testimony of the applicant's representative that the basement will remain unfinished and will not have any habitable space created within said space.

The Board finds that the subject property is hooked to the Town sewer system and that there are three (3) bedrooms on subject property. The Board further finds that there is no increase to the bedroom count of three (3) on subject property through this special permit.

The Board finds that the plans show that the overall height of the dwelling post construction will be 29'.

In addition to the above findings, the Board finds that the proposed plans for addition discussed herein shall 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 alterations and proposed addition to the single-family dwelling as there is no increase in existing nonconforming setbacks, one setback will be improved and no new nonconformities created. Lot coverage by structure is in compliance with Section 240-69 A. of the Code of Falmouth.
- 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 other 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 subject property is hooked to the Town sewer system and the dwelling on subject property is a three (3) bedroom dwelling.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. G. The proposed dwelling alteration and addition 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 a Special Permit to Robert and Mary Riley (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to reconstruct the front deck into a covered porch and to construct an addition at the northwest corner adding a second floor to the pre-existing single-family dwelling on subject property known as 23 East Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The reconstructed front deck into a covered porch, the addition to the northwest corner of the dwelling, second floor habitable space, all setbacks, lot coverage, height of dwelling 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:

- "Plot Plan – Proposed Additions" prepared for Bob Riley at 23 East Avenue Silver Beach North Falmouth, Massachusetts dated June 3, 2014 as drawn by BSS Design, Inc. with a Board date stamp 'received' of July 3, 2014;
- "Riley House" architectural plans drawn by Denise D'Ambrosi Bonoli, AIA consisting of 'Basement Plan', Existing First Floor Plan, Existing Loft Floor Plan, Existing East and West Elevation, Existing North and South Elevation, Proposed First Floor Plan, Proposed Second Floor Plan, Proposed Front Elevation, Proposed West Elevation, Proposed North Elevation and Proposed South Elevation – all with a Board date 'received' stamp of June 3, 2014. Note: None of the plans have generation date.

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

3. There shall be no habitable space created in the basement space.

4. 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.

5. 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.)  
6. 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: 48-14

Applicant: ROBERT J. RILEY and MARY A. RILEY of Needham, MA

Subject Property: 23 East Avenue, North Falmouth, MA  
Map 04A, Section 06, Parcel 000, Lot 041

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 #48-14 Riley / 23 East Ave., N. Falmouth / porch and add'n posted to web 7/24/14 mm