

## Zoning Board of Appeals Decisions Decisions for: 05-15-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 30-14

APPLICANTS/OWNERS: JOHN F. CAREW and JOAN R. CAREW of Teaticket, MA

DEED/CERTIFICATE: Book 9945 / Page 184

SUBJECT PROPERTY: 411 Maravista Avenue, Teaticket, Massachusetts  
Map 46A, Section 04, Parcel 000, Lot 006

Under a date of March 13, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to add a roof deck and exterior stairway to the pre-existing nonconforming accessory structure on subject property located at 411 Maravista Avenue, Teaticket, Massachusetts.

A public hearing was held on May 15, 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, Acting Clerk Matthew McNamara, Associate Kimberly Bielan and Associate Mark Cool

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

Attorney Kevin Klauer with Ament Law Firm was present on behalf of the applicants, who were also present. Attorney Klauer explained that the applicants have owned the property for 20 years and have recently made it their primary residence. The house and garage were built in 1947 and both structures have nonconforming setbacks and the lot coverage by structures is nonconforming at 27%. He said the applicants would like to add a roof deck on a portion of the accessory structure with exterior stairway and that the lot coverage would be increased to 27.7%. Attorney Klauer said the garage is an accessory recreational space and accessory to the main dwelling. The applicants had previously received a special permit in 2004 to construct a stairway to a roof deck on that main dwelling that was never activated. Attorney Klauer stated he believes the roof deck is not detrimental to the neighborhood as he reviewed a map showing other properties in the area with a roof deck. He then reviewed the criteria of Section 240-216 of the Code of Falmouth and stated that the proposed roof deck meets the criteria of said section.

Clerk McNamara read the Town Department referrals into the record.

Clerk McNamara noted correspondence submitted to the file from abutters as: five (5) letters of support and one (1) letter of opposition (immediate abutter).

Board Questions:

Member McNamara asked Attorney Klauer if there was a kitchen in the accessory structure [subject structure of application] and when was it removed.

Attorney Klauer stated it was added in 2000 and removed recently.

Member McNamara asked Attorney Klauer if the accessory structure [subject structure] had been rented separately.

Attorney Klauer stated yes but they are not renting it this year. He said they have an affidavit stating it is not being rented this year even though it may still appear on rental websites.

Member McNamara asked when was it rented.

Attorney Klauer stated periodically over the past ten (10) years.

Member McNamara asked if the change in the use of the accessory structure from a garage to habitable space is via a building permit.

Attorney Klauer said he believes so.

Member McNamara asked if the removal of the kitchen was through a building permit.

Attorney Klauer stated that they removed a gas stove but did not receive a building permit to do that.

Member McNamara asked what the lot coverage was in 2004 and why is there a different percentage on the plan before the Board.

Attorney Klauer stated it was 26.52% and the addition of a shed of 52 sf was added thus increasing the lot coverage.

Member McNamara asked Attorney Klauer how the application, under 240-3 C (1) (b) lessens nonconformities; and does the proposed exterior stairway create a new dimensional nonconformity.

Attorney Klauer stated that the proposed conforms to the average dimensions in the neighborhood and that the proposed does extend a nonconformity but a pre-existing nonconforming structure can be extended.

Member Bielan asked if the garage had existing windows.

Attorney Klauer stated yes, with a patio area and enclosure.

Member Bielan asked if they will be adding a kitchen or kitchenette and if they will be renting to a third party.

Attorney Klauer stated they will not be adding another kitchen and they will not be renting the accessory structure out and that they [applicant] would be willing to sign a covenant stating so.

Chairman Haddad asked if the applicants had any plans to add future accessory structures.

Attorney Klauer stated no.

Member McNamara stated that the 2004 special permit states that this structure is a garage; so are you asking the Board to modify the 2004 special permit to convert the accessory structure.

Attorney Klauer stated no - in 2004 the accessory structure was a dwelling.

Member Bielan stated that the lot coverage is 27% and asked what the total percentage is with the paved driveway.

Attorney Klauer stated he did not know but that things were done incorrectly and the applicant wants to correct the past mistakes by undoing issues.

Joan Carew, applicant, stated that when they purchased the property in 1995 the accessory structure was not a garage and it had been a recreational room for the grandchildren with a gas heater. They went for an approval of a craft room and used it for the overflow of guests – they call it a guest house as the main dwelling has two 10' x 10' bedrooms. She said they have removed the stove from the accessory structure and said they had done things without realizing it was wrong.

Member McNamara asked how many bedrooms are in the main dwelling.

Attorney Klauer stated two and a third is in the accessory structure [subject structure].

Public Comments:

Judith and Bill Flynn of 407 Maravista Avenue spoke in opposition and referred to substantial information they had submitted to the file. They asked the Board to deny the application. Ms. Flynn reviewed rental listings for the accessory structure that they found on the web. She stated that a roof deck would be an invasion of their privacy as the deck would look right into their bedroom window. She further commented that she felt this deck will create a new nonconformity and stated that there are no other ancillary structures within one mile of this house.

Bill Flynn, stated his opposition and noted that there are no roof decks on any of the accessory structures in the area.

William Gillooley of 10 Sycamore Street stated he is opposed and feels that this is a second dwelling and has been used as such; assumes that the deck will be used for outside entertaining and asks that this request be denied He said he is concerned that talking and music on the deck will be a problem.

Joan Carew said they bought the property and we snowbirds at first but now live here full time. They climb up to the roof via a ladder but can no longer do so. She said they will not access the roof deck late at night nor will it be used every night. She said they are making adjustments to right the wrongs.

Member McNamara asked what year the shed was added to the property.

Attorney Klauer stated 2009.

Member McNamara said that Mr. Klauer stated that he doesn't believe that Section 240-216 applies but feels that the Board has the right to ask if the lot is suitable for a roof deck. He asked Attorney Klauer if a roof deck can be built with no additional lot coverage.

Attorney Klauer said possibly with a spiral staircase but don't know what requirements are for that.

Board Discussion:

Member McNamara said the Board has to split into two issues: deck and accessory structure. The roof deck does not correct past mistakes. There is a missing gap of conversion of the garage to living space, which would have required a special permit and the taking out of a gas stove is not necessarily approvable as living space or use. The shed addition required a special permit due to lot coverage; assuming all were dealt with properly Section 240-3 C. does not meet "more nonconforming" – MGL states that a Town can be more restrictive – under Section 240-69 E. the Board can increase nonconforming lot coverage up to 25%; more than 25% we don't take away but we can't make it more nonconforming.

Member Bielan stated she agrees with Matt – the extension of this lot coverage is more nonconforming and we cannot get to Section 240-216 if we believe it to be more detrimental.

Members Cool and Chairman Haddad agreed.

Attorney Kevin Klauer asked the Board to allow his applicant to withdraw the application without prejudice and potentially reapply.

Member McNamara stated that this hearing has identified problem areas and applicant should address the issues.

Member McNamara made a motion to grant the applicant to withdraw the application without prejudice. Member Bielan seconded the motion. Motion carried 4 – 0.

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 applicant to withdraw the application without prejudice.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 30-14

Applicant: JOHN F. CAREW and JOAN R. CAREW of Teaticket, MA

Subject Property: 411 Maravista Avenue, Teaticket, Massachusetts  
Map 46A, Section 04, Parcel 000, Lot 006

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 applicant to Withdraw the application Without Prejudice

\_\_\_\_\_  
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 #30-14 Carew / 411 Maravista Ave / Withdraw without Prejudice posted to web 5/28/14 mm