

Zoning Board of Appeals Decisions Decisions for: 04-17-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 20-14

APPLICANT(S)/OWNER(S): PATRICK FINNERAL and VALERIE FINNERAL
of Lowell, MA

DEED/CERTIFICATE: Book 19238 / Page 76

SUBJECT PROPERTY: 35 Woodside Drive, East Falmouth, MA
Map 41, Section 06, Parcel 000, Lot 194

Under a date of February 14, 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 to the rear of the pre-existing nonconforming single-family dwelling creating a new kitchen space and master bedroom on subject property located at 35 Woodside Drive, East Falmouth, Massachusetts.

A public hearing was held on April 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 Scott Zylinski, Member Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

Neil Curran, Agent, was present on behalf of the owner/applicant and reviewed the existing site conditions and proposed addition. Mr. Curran explained that the applicant purchased the property ten (10) years ago and is now making it their permanent home. The only nonconformity is the setback from the structure to the front property line off Woodside Drive of 13.9' that is required to be 25'. The lot coverage by structures is below the 20% maximum allowed and will remain below the 20% through the construction. He explained that the addition will be at the rear of the dwelling and not visible from the roadway. The dwelling and the addition are one-story structures. A new landing and step is proposed at the side entrance off the driveway. The addition is to allow for renovation for a new kitchen area and create a new master bedroom and bath. The dwelling has been a three bedroom dwelling and will remain a three bedroom dwelling through this approval. Mr. Curran stated that the proposed is consistent with the general neighborhood area and asked that the Board approve the application.

Clerk Zylinski read the Town Department referrals into the record.

A referral submitted from the Conservation Commission stated: Keep stormwater on the property to avoid run-off into Wetlands to the west.

A referral submitted from the Water Department stated: Upgrade to 1" service or sign a waiver.

A referral from the Board of Health Department stated: The plans call for the den to have its opening cut back which makes it unfit for use as a bedroom. The dwelling remains a three bedroom house. No negative comment.

A referral from the Engineering Department had standard comments.

A referral from the Building Department and Planning Department had no comment.

Clerk Zylinski noted that there was no correspondence submitted to the file from abutters or interested parties.

Board Questions:

Member Cool asked about side yard property line and shrubs along the easterly side.

Mr. Finneral stated that the property line runs through the middle of the shrubs and trees.

Member Bielan asked if the shed was to be relocated and where on the property it would be placed.

Mr. Curran stated it will be relocated to the left rear corner of lot with compliant setbacks.

Member McNamara asked what the size of the shed is and if the shed was calculated within the lot coverage by structures.

Mr. Curran said the shed is less than 100 square feet and he assumes it is calculated within the lot coverage percentage.

Chairman Haddad asked how the stormwater would be managed on site.

Mr. Curran stated that there will be drywells.

Chairman Haddad asked about the bedroom that will be made into a study and what size the cased opening will be.

Mr. Curran stated it will be a 5' cased opening.

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

There was no public comment.

Member Zylinski 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 35 Woodside Drive in East Falmouth contains 10,375 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition at the rear of the pre-existing nonconforming single-family dwelling to create a new master bedroom and bath and to reconfigure and increase existing kitchen and a landing with step at the northeast side of said dwelling. The existing dwelling is a ranch style, three bedroom dwelling; the addition will be one-story and the dwelling will remain as a three-bedroom. The existing single-family dwelling has a nonconforming setback of 13.9' to the front property line off Woodside Drive that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. Lot coverage by structures and by structures, parking and paving are in compliance with the maximum percentages allowed in a residential district pursuant to Section 240-69 A. of the Code of Falmouth. The proposed addition does not increase the nonconforming front yard setback and the lot coverage by structures will not exceed the 20% maximum allowed. There is a shed at the rear of the property that will be relocated to accommodate the proposed addition. Relocation of the shed will be in compliance with all setbacks pursuant to Section 240-68 B. 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 addition to the rear as well as a landing and step at the northeast side of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed addition does not increase existing nonconformity and

will not create any new nonconformity.

The Board finds that one of the three bedrooms in the existing dwelling will have a cased opening creating a 'den' area to accommodate the new master bedroom addition to insure a three-bedroom dwelling status on subject property. The Board further finds that the proposed master bedroom and bath and renovation of existing kitchen 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 shed is calculated as part of the lot coverage percentage; and that the shed will be relocated within the back or side yard of subject property to accommodate the proposed addition to the dwelling. The Board further finds that the existing shed at the rear of the property shall be relocated and placed on the subject property within compliance of all setbacks pursuant to Section 240-68 B. of the Code of Falmouth. Furthermore, the Board finds through testimony of the applicant's representative that the stormwater will be maintained on site through the installation of new, or maintenance of existing, drywells.

In addition to the above findings, the Board finds that the proposed addition to the pre-existing nonconforming single-family dwelling 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 at the rear of the dwelling as it does not create any new nonconformity not does it increase the existing nonconforming front yard 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 basically be unchanged as the addition is at the rear of the dwelling and not visible from the roadway; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place and signed off as a three bedroom system by the Board of Health.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water line or sign a waiver.

G. The proposed dwelling 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 McNamara made a motion to Grant the Special Permit with conditions. Member Zylinski 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 Valerie Finneral (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an addition to the rear of the pre-existing nonconforming three-bedroom single-family dwelling as well as a landing and step at the northeast side of same dwelling on subject property known as 35 Woodside Drive, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the proposed addition, landing and step, lot coverage, setbacks, height of structure and use of dwelling shall be as represented to the Board at this hearing and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan 35 Woodside Drive in East Falmouth, Massachusetts" prepared for Patrick and Valerie Finneral drawn by Costa Associates, Inc. on Sheet 1 of 1 dated 10/7/13 signed by Christopher Costa, P.L. S. on 10/6/13 with a Board date 'received' stamp of February 14, 2014; and

- "Proposed Addition to Finneral Residence 35 Woodside Drive Falmouth, Massachusetts" architectural plans drawn by A.M. Michniewicz consisting of Drawing No. 1 'Elevations' dated 8/2013, Drawing No. 2

'Elevation' dated 8/2013 and Drawing No. 3 'Floor Plan' dated 8/2013 and all with a Board date 'received' stamp of February 14, 014.

2. There shall be no more than three (3) bedrooms allowed on subject property.
3. The 'den' shown on Drawing No. 3 listed in Condition 1 above shall have, and maintain, a five foot (5') cased opening so as not to meet the criteria of a bedroom. The 'den' was previously a bedroom and vacated as such to accommodate the new master bedroom being constructed at the rear of the dwelling.
4. Stormwater shall be maintained on site by drywells as stated by applicant's representative during the hearing; whether the drywells are existing and shall be maintained or new drywells installed.
5. The applicant shall submit a letter from Costa Associates, Inc., Surveyors of record for subject property, stating that the lot coverage percentages shown on the "Certified Plot Plan" noted in Condition 1 above does in fact include the shed shown on said property. The letter from Costa Associates, Inc. shall include the size of the shed for the record. The letter from Costa Associates, Inc. shall be submitted to the Board of Appeals prior to the issuance of a building permit.
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. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. 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: 20-14

Applicant: PATRICK and VALERIE FINNERAL of Lowell, MA

Subject Property: 35 Woodside Drive, East Falmouth, MA
Map 41, Section 06, Parcel 000, Lot 194

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.

Scott Zylinski, Clerk, 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 20-14 Finneral / 35 Woodside Dr., E. Fal / Addition posted to web 4/30/14 mm