

Zoning Board of Appeals Decisions Decisions for: 03-20-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 16-14

APPLICANT: BRANCH J. PARRISH of West Falmouth, MA

OWNER(S): Branch J. Parrish and Colleen J. Parrish

DEED/CERTIFICATE: Book 19459 / Page 138

SUBJECT PROPERTY: 352 West Falmouth Highway, West Falmouth, MA
Map 25, Section 02, Parcel 016A, Lot 002U

Under a date of February 6, 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 construct a two-story addition to the front façade of the pre-existing nonconforming condominium unit on subject property known as 352 West Falmouth Highway, West Falmouth, Massachusetts.

A public hearing was held on March 20, 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, Vice Chairman Kenneth Foreman, Clerk Scott Zylinski, Member Patricia Johnson and Associate Mark Cool

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

Branch J. Parrish was present and reviewed existing and proposed plans regarding his condominium unit on subject property. He explained that the 14' x 16' two-story addition to the northeast front façade of the existing condo unit will be to increase the living space. The condo has a reverse floor plan (bedrooms ground level and kitchen and living room 2nd level). The addition will create a 'study' on the first floor that will have a 4' cased opening to existing hall and the proposed second floor space will be a family/sitting room with a 7' cased opening off kitchen area. Mr. Parrish explained that there will be no additional bedrooms as he is allowed only two (2) bedrooms within his unit. He explained that the proposed foundation will have a six (6) foot opening to comply with Title V regulations of setback to septic components.

Clerk Zylinski read the Town Department referrals into the record.

A referral submitted from Board of Health Agent David Carignan states: The proposed addition foundation plans show a modified poured concrete structure. The critical characteristic of the proposed foundation is a six-foot wide opening on the north wall. This feature renders the space below the addition open to the weather. The specification of a non-continuous foundation is equivalent to a pier foundation in that the foundation is not tight to the weather. Pier type foundations do not have minimum setbacks to septic system components. The applicant proposes to modify the septic system to replace components that will be destroyed by the construction of the addition.

A referral submitted by the Conservation Commission's Agent, Mark Kasprzyk states: Required to file a Notice of Intent application. Required to close out old Order of Conditions issued 6/16/1999 that does not have compliance.

A referral from Historic District notes that the applicant is on the March 4, 2014 Agenda of the Historic District Committee.

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

Board Questions:

Member Johnson asked how the proposed complies with flood plain.

Mr. Parrish stated it complies with flood plain regulations (see plan). He explained it is an upside down house with two bedrooms and two bathrooms downstairs and the living space is on second level.

Member Johnson asked if there were going to be any change in the parking of vehicles.

Mr. Parrish stated no – he can park three cars on his area.

Member Johnson asked what issues Mr. Parrish has with closing out Notice of Intent.

Mr. Parrish explained that he is filing a Notice and is meeting with Conservation Commission 3/31 and is scheduled for a hearing on April 2nd.

Member Zylinski asked if septic was being upgraded.

Mr. Parrish stated yes – he needs to move one component to comply.

Member Cool stated concern with cedar trees and parking and future mitigation.

Mr. Parrish said he has three parking spots and three spots will remain. Mitigation for Conservation Commission will be out back; and any planting in front of his unit will be thinly planted.

Member Bielan asked if his unit includes the surrounding land.

Mr. Parrish stated each unit has exclusive use area.

Chairman Haddad asked about amended Covenant documents.

Mr. Parrish explained the covenant was amended to include proposed, signed by all three unit owners and filed with the Registry.

Member Haddad asked if there was any increase in number of bedrooms through proposed and asked if study would be used for sleeping accommodations.

Mr. Parrish stated there will be only two bedrooms in the unit which is all he is allowed through the condominium documents; and that the study will not be a bedroom.

Chairman Haddad asked about proposed height of addition and use of basement.

Mr. Parrish said the existing dwelling is 27' in height and the proposed addition is 26.3'. He said the use of the basement is storage with 6.6' ceiling height; utilities are located upstairs due to flood zone.

Chairman Haddad asked if he intended to rent out the unit.

Mr. Parrish stated he had done so in the past but does not currently rent out – resides there. He explained condo docs allow rental of units and he may look into house swapping in the future.

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

Member Cool made a motion to close the hearing. Member Foreman 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 352 West Falmouth Highway in West Falmouth contains 35,747 square feet of Residential B zoned land that is located within the Great Sippewisset Marsh Coastal Pond Overlay District and the Historical District. The subject property has three single-family dwellings located on site; the subject dwelling is known as Unit 2 (most northwesterly unit on site). The dwellings are known as Marsh View Condominiums and are subject to certain covenants. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct a 14' x 16', two-story addition with porch to the front façade of existing Unit 2. The property/dwelling is nonconforming due to the three existing and separate dwelling units on the Residential B zoned lot where only one dwelling is allowed pursuant to Section 249-19 of the Code of Falmouth. The subject dwelling unit received a Special Permit - #41-99 - to increase existing footprint, enclose an existing deck; add a half-story on back of residence; and add a deck to the rear of dwelling as well. The proposed addition represented and discussed herein as additional living space [study on first floor and family room on second floor] will not increase the number of the two existing bedrooms within the dwelling and it does not create any new nonconformity on subject property. The three separate dwellings on subject property are restricted to a certain number of bedrooms for each dwelling unit, each unit's exclusive use area, shared common area and other items specific for each unit owner. The plans submitted with this application and reviewed by the Board have been approved by the other unit owners belonging to the Marsh View Condominium Trust.

Section 240-3 C. 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 16', two-story addition with porch to the front façade 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 nonconformities on subject property, does not create any new nonconformity and has approved by the other unit owners as evidenced by the submission of the "Certificate of Approval of Proposed Work dated March 15, 2014 signed by all condominium owners on subject property and filed with the Barnstable Registry of Deeds. Furthermore, the Board finds that the proposed plans discussed and represented herein are within the 'exclusive area' deeded to this dwelling and unit owner's use.

The Board finds that the applicant filed an application proposed plans with the Historic District Commission and received a "Certificate of Appropriateness" on March 4, 2014 (see March 5, 2014 letter from Falmouth Historic Commission submitted to file).

The Board finds through applicant's testimony that they are working with the Conservation Commission to meet compliance with earlier filing of a Notice of Intent as well as a new filing of a Notice of Intent for the proposed plans discussed and represented herein. The Board further finds through applicant's testimony that a hearing with the Conservation Commission has been scheduled for April 2, 2014. Furthermore, the Board will set forth a condition herein that this approval shall be contingent upon review and approval through the Conservation Commission.

The Board finds that the applicant submitted plans showing a 6' opening in the foundation of the proposed front addition to allow for compliance with Title V regulations. The Board further finds that the proposed plans discussed and represented herein does not add any bedrooms to the existing two-bedroom dwelling unit known as Unit 2 on subject property. Furthermore, the Board finds that the proposed plans for additional living space to the first and second floor of the existing dwelling unit show that both spaces being added will have no less than a four foot (4') cased opening [no pocket doors shown on plans] so as not to be considered a bedroom; and that the applicant stated at the hearing that said spaces will not be used as bedrooms or sleeping accommodations.

In addition to the above findings, the Board finds that the proposed 14' x 16' addition with porch to the front façade of the dwelling unit discussed herein known as Unit 2 on subject property 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 increase in existing nonconformity and there is no new nonconformity through the plans discussed and approved herein.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a multi-family residential lot since approximately 1910.

- 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; 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 two 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 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 Cool made a motion to Grant the Special Permit with conditions. Member Foreman 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 to Branch J. Parrish (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a 14' x 16' two-story addition to the front façade of Unit 2 condominium known as 352 West Falmouth Highway, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the 14' x 16' two-story addition with porch, all setbacks, building height, lot coverage and use of proposed addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan – Proposed Addition" for 352 West Falmouth Highway prepared for Jeff Parrish in Falmouth, MA – Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated January 27, 2014 revised on 2/20/14 and with a Board date 'received' stamp of February 20, 2014;
- "Septic System Details" for 352 West Falmouth Highway prepared for Jeff Parrish in Falmouth, MA – Sheet 2 of 2 dated January 27, 2014 and with a Board date 'received' stamp of February 6, 2014; and
- "Parrish Addition" architectural plans drawn by William F. Roslansky Architect consisting of Sheet No. A-1 'Proposed Plans' dated 1/15/2014, Sheet No. A-2 'Floor Plans' dated 1/15/2014, Sheet No. A-3 'Elevations' dated 1/15/2014 and Sheet No. A-4 'Existing House' dated 1/15/2014 – all with a Board date 'received' stamp of February 6, 2014.

2. There shall be no more than two bedrooms located within the dwelling unit, Unit 2 [352 West Falmouth Hwy] as discussed herein.

3. The two new living spaces through the 14' x 16' two story addition approved herein shall not be used as bedrooms or have sleeping accommodations created within said spaces. The two spaces, first floor space depicted as a 'study' and the second floor space with the appearance of a 'family room' shall remain open to the living spaces with no less than a four foot (4') cased opening. There shall be no pocket doors installed as not shown in plans.

4. This Special Permit approval is contingent upon the applicant becoming in compliance with a violation of the Conservation Commission's NOI from previous work conducted and a new filing for a Notice of Intent with approval from Conservation Commission for the plans submitted and approved herein (see Condition 1 above).

5. 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.

6. 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.)
7. 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: 16-14

Applicant: BRANCH J. PARRISH of West Falmouth, MA

Subject Property: 352 West Falmouth Highway, West Falmouth, MA
Map 25, Section 02, Parcel 016A, Lot 002U

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 #16-14 Parrish / 352 West Falmouth Hwy / two story addition posted to web 4/2/14 mm