

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 13-14

APPLICANT/OWNER: RVK REAL ESTATE, LLC of Southborough, MA

DEED/CERTIFICATE: Certificate #201024 – Plan 4286A, Plate 17

SUBJECT PROPERTY: 372 Maravista Avenue, Teaticket, MA
Map 46A, Section 08, Parcel 000, Lot 087

Under a date of February 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 a 5' x 15' addition to the east façade of the pre-existing nonconforming single-family dwelling on subject property located at 372 Maravista Avenue, Teaticket, 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 Kimberly Bielán

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

Matthew Kent, Contractor, was present on behalf of the applicant/owner to discuss the proposed 5' x 15' addition to the east side of the pre-existing nonconforming single-family dwelling on property known as 372 Maravista Avenue, Teaticket. The subject property is on three streets and the proposed addition is only visible from one of these streets [Boston Street]. The addition is to increase the kitchen and bathroom on first floor and will create additional space for the two existing bedrooms on the second floor. There will be no increase in the number of bedrooms in the dwelling – count will remain at four (4).

Clerk Zylinski read the Town Department referrals into the record.

Referral submitted from the Board of Health Agent David Carignan states: As of this writing, this addition cannot be constructed at this location with a crawlspace or full foundation. The setback to the existing soil absorption system must be 20 feet and to a tank ten feet. Slabs only require a 10 foot setback and sonotube foundations have zero setback. The applicant could elect to seek a variance from the Board of Health for this addition, but it would be evident it would be a self-imposed hardship.

A referral from the Conservation Commission Agent Mark Kasprzyk states: Contain stormwater on property and off Maravista.

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

Board Questions:

Member Johnson asked if the addition will be constructed on sonotubes.

Mr. Kent stated yes and the plan shows that the addition will have concrete pilings.

Chairman Haddad asked how many bedrooms existing and if any new ones through proposed plans.

Mr. Kent stated there are four bedrooms existing and there will only be four bedrooms through the proposed plans.

Chairman Haddad asked if the stormwater will be contained on-site.

Mr. Kent stated the existing drywells will be maintained.

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

Member Foreman made a motion to close the hearing. Member Zylinski 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 372 Maravista Avenue in Teaticket contains 12,000 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a 5' x 15' two-story addition to the east façade of the pre-existing nonconforming single-family dwelling on subject property. The property is surrounded by three streets with the structure being less than the required 25' setback at two of the front property lines pursuant to Section 240-68 A. of the Code of Falmouth. The southeast corner of the dwelling does not meet the required 10' setback to a side yard property line pursuant to Section 240-68 B. of the Code of Falmouth. It is noted that the plan shows the setback to the structure at the southeast corner of the dwelling to be 6.8' from the property line, but that does not include the landing and steps off that rear corner of the dwelling which appears to make the 6.8' a 3' (+ or-) setback. The lot coverage existing and proposed is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed addition does not create any new nonconformity nor does it increase an existing nonconformity. The 5' x 15' addition represented herein is to add additional space to existing kitchen and bathroom on the first floor and slightly increasing the two existing bedrooms on the second floor.

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 5' x 15' two-story addition to the easterly façade of the pre-existing nonconforming single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed addition will not increase existing nonconforming setbacks, nor will it create any new nonconformity. Furthermore, the Board finds that the small addition will enhance the utilization of the existing single-family dwelling by residents.

The Board finds through the referral submitted by the Board of Health and the applicant's representative that the addition proposed herein will be built on sonotubes and therefore complies with Title V regulations. The Board further finds that the proposed addition will not increase the number of bedrooms in this existing four-bedroom dwelling.

In addition to the above findings, the Board finds that the proposed 5' x 15' two-story addition on the east façade of 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 represented herein as it will not increase existing nonconforming setbacks 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 as the addition is at the rear of the dwelling and not seen from roadway; there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved; 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 four 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 addition to the dwelling as represented and discussed 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 Foreman 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 RVK Real Estate, LLC (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a 5' x 15' two-story addition at the east façade of the pre-existing nonconforming four-bedroom single-family dwelling known as 372 Maravista Avenue, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The location and construction of the 5' x 15' two-story addition, all setbacks, height of addition, lot coverage 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:

- "Certified Plot Plan (For Addition)" located at: 372 Maravista Avenue East Falmouth, MA prepared for Elizabeth P. Dill and Eric A. Enge, Sheet 1 of 1 drawn by MacDougall Surveying & Associates dated October 2, 2013 and with a Board date 'received' stamp of February 3, 2014;

- "New Addition/Remodeling For: Dill Residence 372 Maravista Road Falmouth, MA" architectural plans drawn by Cotuit Bay Design, LLC consisting of Drawing EX1 and EX2 dated 1/25/2014 (Rear and Left Elevation and First and Second Floor Plan) with a Board date 'received' stamp of February 3, 2014; and

- "New Addition/Remodeling For: Dill Residence 372 Maravista Road Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawing A1 and A2 (Proposed Rear and Left Elevation and First and Second Floor Plan) dated 1/25/2014 and with a Board date 'received' stamp of February 3, 2014.

2. The stormwater runoff shall always be maintained on-site [applicant's representative gave testimony that there are existing drywells on-site and will be maintained].

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

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: 13-14

Applicant: RVK REAL ESTATE, LLC of Southboro, MA

Subject Property: 372 Maravista Avenue, Teaticket, MA
Map 46A, Section 08, Parcel 000, Lot 087

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 #13-14 RVK Real Estate LLC / 372 Maravista Ave / Addition posted to web 3/27/14 mm