

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 22-14

APPLICANT: DENNIS E. O'CONNELL of No. Falmouth, MA

OWNER: Dennis E. O'Connell and Dianne M. O'Connell

DEED/CERTIFICATE: Book 13356 / Page 010

SUBJECT PROPERTY: 30 Silver Beach Avenue, North Falmouth, MA  
Map 04A, Section 44, Parcel 000, Lot 405

Under a date of February 18, 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 sunroom over a portion of existing rear deck and construct a second floor addition over a single-story portion of the pre-existing nonconforming single-family dwelling on subject property known as 30 Silver Beach Avenue, North 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 Kimberly Bielán

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

Dennis Murphy, Agent, was present on behalf of the applicant/owners who were present. Mr. Murphy reviewed the existing site and dwelling structure. The structure is currently a 1.5 story three-bedroom dwelling purchased in 2000 by the applicants who would like to construct an addition over the remaining single-story portion of the dwelling to create a master bathroom and closet off the existing bedroom – creating a master suite. Also proposed is a sunroom that will be constructed over 2/3's of the existing rear deck. The dwelling structure has a nonconforming setback from the front deck/porch to the front property line of 19.4' and the lot coverage by structures is nonconforming at 21.4%. Mr. Murphy stated that neither nonconformity will be increased through the proposed work as the footprint of the dwelling structure and deck remain the same and there is no increase to the existing three-bedroom count. He stated that photos of some of the homes in the general vicinity were submitted to the file showing that the proposed 2nd story addition is in keeping with the integrity of the neighborhood.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Board of Health Agent David Carignan states: A review of the record indicates there is a septic system to the rear of the house in the area of the proposed screened porch. There is a deck there now and that is not a problem for the septic. The proposed screen porch is not a problem if constructed on piers or sonotubes.

Referrals submitted by the Engineering Department and Conservation Commission had standard comments regarding permitting and stormwater runoff being contained on site.

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

Clerk Zylinski noted that there is one letter of support submitted to the file from Teresa L. Morris of 36 Silver Beach Avenue, North Falmouth.

Board Questions:

Member Bielan asked if the footprint of the existing rear deck is being expanded due to construction of sunroom.

Mr. Murphy said no.

Chairman Haddad asked if there are any accessory detached structures proposed now or in future.

Mr. Murphy stated no.

Chairman Haddad asked what the existing basement use is.

Mr. Murphy stated it has laundry facilities and a recreation room. He added that there will be no construction or additions in the basement area.

Chairman Haddad commented that there was not going to be any plumbing or electricity installed in sunroom.

Mr. Murphy said that is correct.

Chairman Haddad asked if any drywells will be installed.

Mr. Murphy said only if required to.

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

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 30 Silver Beach Avenue in North Falmouth contains 7,857 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a sunroom over a portion of existing rear deck and construct a second floor addition over a single-story portion of the pre-existing nonconforming single-family dwelling on subject property. The dwelling structure has a nonconforming setback at the front from structure to front property line off Silver Beach Avenue of 19.4' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the lot coverage by structures is nonconforming as it exceeds the 20% maximum allowed in a residential district according to Section 240-69 A. of the Code of Falmouth. The proposed second floor addition over the remaining one-story portion of the existing dwelling and the proposed sunroom that will be created over 2/3's of the existing rear deck will not increase the existing nonconforming setbacks, nor will any new nonconformity be created. The proposed second floor addition will be to create a new master bathroom, walk-in closet and office for the existing second floor bedroom – making it a new master bedroom and bathroom. The proposed second floor addition will make the existing 1.5 story dwelling a full two-story dwelling. The sunroom proposed to be constructed over a portion of the existing deck will not have heat or electricity.

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 creation of a sunroom over the existing rear deck and the second floor addition to the existing bedroom of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed additions will be an enhancement to the utilization of the dwelling by its residents.

The Board finds through testimony by the applicant's representative [Dennis Murphy] that the sunroom will not have any plumbing or heating or be created into a bedroom. The Board further finds through applicant's testimony that there will be no additional accessory structures added to the subject property, thereby increasing the lot coverage. Furthermore, the Board finds that the basement space has a laundry facility and a recreation room; and that there will be no bedroom or sleeping accommodations created within said basement.

The Board finds that the applicant's representative stated that drywells may be added to subject property if required or if stormwater runoff cannot be maintained on site.

In addition to the above findings, the Board finds that the proposed 2nd story addition and creation of a sunroom as represented herein 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 additions as there is no increase in the existing footprint, thus no increase to nonconforming setbacks and no increase in the nonconforming lot coverage percentage.
- 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 several 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 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.
- G. The proposed 2nd floor addition and creation of a sunroom as 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 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 Dennis E. O'Connell (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a sunroom over a portion of the existing rear deck off dwelling and to construct a second floor addition over the single-story portion of the pre-existing nonconforming single-family dwelling on subject property known as 30 Silver Beach Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The creation of a sunroom over portion of existing rear deck, construction of a second story addition, all setbacks, lot coverage by structures and use of dwelling, sunroom and basement shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Building Permit Plan Proposed Addition" prepared for Dennis O'Connell 30 Silver Beach Avenue Falmouth, MA – Drawing 1 of 1 drawn by G.A.F. Engineering, Inc. dated January 30, 2014 and revised on 2/11/14 with a Board date 'received' stamp of February 18, 2014; and
- "O'Connell Residence 30 Silver Beach Ave. North Falmouth, MA" architectural plans drawn by 'Architecture by SPB' consisting of Drawings A1 through A5 all dated 9/26/13 and revised on 12/2/2013 showing proposed floor layouts and elevations of dwelling and sunroom and with a Board date 'received' stamp of February 18, 2014.

2. There shall be no more than three (3) bedrooms on subject property. There shall be no bedrooms created within the sunroom or the basement space.

3. All stormwater runoff shall be maintained on-site. If drywells are required by the Building Department to maintain runoff, the applicant shall comply with requirement.

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: 22-14

Applicant: DENNIS E. O’CONNELL of North Falmouth, MA

Subject Property: 30 Silver Beach Avenue, North Falmouth, MA  
Map 04A, Section 44, Parcel 000, Lot 405

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 #22-14 O'Connell / 30 Silver Beach Ave., N. Fal / Additions posted to web 3/27/14