

Zoning Board of Appeals Decisions Decisions for: 03-27-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 24-14

APPLICANT: BARRY BEDER of West Roxbury, MA

OWNER(S): Eileen O'Connell and Barry Beder of W. Roxbury, MA

DEED/CERTIFICATE: Book 24094 / Page 306

SUBJECT PROPERTY: 286 Edgewater Drive East, East Falmouth, MA
Map 41, Section 03, Parcel 000K, Lot 016

Under a date of February 25, 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 two-story addition to the pre-existing nonconforming single-family dwelling on subject property located 286 Edgewater Drive East, East Falmouth, Massachusetts.

A public hearing was held on March 27, 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, Acting Clerk Matthew McNamara, Member Patricia Johnson and Associate Member Mark Cool

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

Barbara Frappier with Warwick and Associates was present on behalf of the owner/applicant who was also present. Ms. Frappier reviewed the site noting the only existing nonconformity with the property being that of the rear deck being setback 38' from the 3' contour line of the waters of Eel Pond which requires a 50' setback. Ms. Frappier reviewed the proposed two-story addition on the west side of the existing single-family dwelling. The plan shows that the proposed addition meets the 50' setback to the 3' contour line of Eel Pond – the existing nonconforming setback will remain unchanged. The addition will allow for the first floor to be renovated creating a new kitchen area and bathroom and the second floor addition will be to create a new master bedroom and bathroom. Ms. Frappier stated that there will be no more than two (2) bedrooms on subject property.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Engineering Department has standard comment regarding if any changes are within the right of way an application to Engineering is required; any changes to utilities would require permission from appropriate Town Department; and the project cannot direct any stormwater runoff to public property, abutters or right of ways.

A referral submitted from the Conservation Commission Agent, Mark Kasprzyk noted that an Order of Conditions was issued on 8/29/2012 (copy of Order of Conditions submitted to file).

A referral from Board of Health Agent David Carignan states: This property is deed restricted to two bedrooms by a 1996 Board of Health Decision. The proposed addition will add one bedroom, but at the end of the project it appears there will be no more than two bedrooms. The so-called loft area has insufficient window area and headspace to be considered habitable space (1996 Decision submitted to file).

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

Clerk McNamara noted that there was no correspondence submitted from any abutter or interested party.

Board Questions:

Member Bielan asked if the plan before this Board now is the same plan that was approved by the Conservation Commission.

Ms. Frappier stated yes and that the plantings required are done and signed off.

Member Bielan asked about the renovation of the loft area and if it was accessible from the proposed addition.

Ms. Frappier said it will be remodeled but will remain a loft area and that it is not accessible from addition.

Member Bielan asked if the basement will remain crawl space.

Ms. Frappier stated yes.

Member McNamara asked what the height of the proposed addition will be.

Ms. Frappier and Mr. Beder calculated the height to be approximately 26'.

Chairman Haddad asked what the garage is being used for.

Mr. Beder stated storage.

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 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 286 Edgewater Drive East in East Falmouth contains 15,700 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 a two-story addition of the pre-existing nonconforming single-family dwelling. In 2002 the Board of Appeals granted a Special Permit (#54-02) to construct a detached garage structure for more than two cars. The plan currently before the Board is to construct a 20' x 26.5' two-story addition to the west façade (side) of the existing dwelling. The two-story addition will allow for renovation of the first floor to create new kitchen and sitting room area; and a new master bedroom and bath on the second floor. It is noted that the architectural plans submitted do not show a second bedroom; and that there is an existing basement area with no walk-out to rear of property. There is a bulkhead proposed on new addition with basement area. In 1996 the Board of Health approved an upgrade to the septic system and required that the property be deed restricted to two (2) bedrooms. The Board of Health approval and restriction to two bedrooms was filed with the Registry of Deeds on 12/24/1996. The proposed addition is shown on the "Site Plan" submitted to be 53' from the 3' contour line of the Waters of Eel Pond which meets the 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. However, the existing dwelling structure is unchanged and remains at a nonconforming setback of 38.7' from the 3' contour line.

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 two-story addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists as it does not increase the existing

nonconforming setback, it does not create a new nonconforming setback and the lot coverage by structures is in compliance with Section 240-69 A. of the Code of Falmouth. The Board further finds that the proposed addition is an enhancement to the utilization of the dwelling and property by its residents.

The Board finds through testimony that there is no intent to have more than two (2) bedrooms on subject property. The Board further finds that the loft area shown on Drawing A2 of the architectural plans will not have proper headroom or window area to be a bedroom as noted by the Board of Health referral submitted to the file. Furthermore, the Board finds by testimony of the applicant that the detached garage structure is used for storage and not habitable space.

In addition to the above findings, the Board finds that the proposed two-story 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 as there is no new nonconforming setbacks and the existing nonconforming setback will remain the same; and the lot coverage will remain in compliance with Section 240-69 A. of the Code of Falmouth.

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 two-bedroom system by the Board of Health and is also deed restricted to a two-bedroom dwelling by the Board of Health.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed two-story addition to the dwelling 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 Cool 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 Barry Beder (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a two-story addition to the pre-existing nonconforming single-family dwelling on subject property known as 286 Edgewater Drive East, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction and location of the proposed 20' x 26.50' two-story addition, all setbacks, lot coverage, height of proposed addition and use of proposed addition and dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan" prepared for Steve Cook of 286 Edgewater Drive East Falmouth, MA – Sheet 1 of 2 drawn by J.E. Landers-Cauley, P.E. dated 6/1/2012 and with a final revision date of 2/25/2014 with a Board date 'received' stamp of February 25, 2014;

- "New Addition For: Beder/O'Connell Residence" consisting of Drawing S-200 'Fdn & 1st Floor Framing Plan' dated 12/18/2013 and with a Board date 'received' stamp of February 26, 2014; and

- "New Addition For: Beder/O'Connell Residence" Consisting of Drawing A1, A2 and A3 all dated 10/1/2013 and drawn by Cotuit Bay Design, LLC and all with a Board date 'received' stamp of February 25, 2014

2. There shall be no more than two (2) bedrooms allowed on subject property (see Board of Health Decision of December 9, 1996 filed with Registry of Deeds on 12/24/96).

- 3. There shall be no bedrooms or sleeping accommodations created within the detached garage structure on subject property. Applicant gave testimony that it is used for storage and shall remain as storage.
- 4. There shall be no derogation from conditions set forth in Special Permit #54-02, except as stated herein.
- 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: 24-14

Applicant: BARRY BEDER of West Roxbury, MA

Subject Property: 286 Edgewater Drive East, East Falmouth, MA
Map 41, Section 03, Parcel 000K, Lot 016

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 #24-14 Beder / 286 Edgewater Dr East / two story addition posted to web 4/2/14 mm