

Zoning Board of Appeals Decisions Decisions for: 02-27-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 121-13

APPLICANT/OWNER: GARY A. GIROUARD, TRUSTEE of Falmouth, MA

DEED/CERTIFICATE: Book 24734 / Page 322

SUBJECT PROPERTY: 28 Nye Road, Falmouth, MA
Map 47B, Section 05, Parcel 018, Lot 000

Under a date of December 26, 2013 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 raze a portion of the pre-existing nonconforming accessory structure [bunkhouse] and renovate same on subject property located 28 Nye Road, Falmouth, Massachusetts.

A public hearing was held on February 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. Note: The hearing was originally scheduled for February 6, 2014 but due to a lack of quorum of the Board of Appeals, the hearing was opened on February 27, 2014 [within the 65 day requirement under MGL 40A, sec 9 and 11].

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Acting Clerk Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

Gary Girouard, applicant, was present and reviewed the existing site conditions and the proposed razing of a portion of the detached accessory structure on subject property. He explained that a portion of the pre-existing nonconforming accessory structure [he calls a bunkhouse] is on cinder blocks and is deteriorating. The reconstructed portion will be moved slightly forward to improve the nonconforming setback; the lot coverage will remain the same as there will be no increase in the size as it exists. The accessory structure will be renovated to be converted into a one-car garage in a portion of it and the remaining space will be used as a play space that will include a bathroom and wet bar for entertaining. Mr. Girouard explained that they do a lot of entertaining in the summer months and the space will become a 'cabana' type use. He further explained that the main dwelling had four bedrooms, one of which was converted to a study. He said the Board of Health agent David Carignan did a walk through in the main dwelling to confirm three bedrooms as he feels the 'cabana' will meet the criteria of the fourth bedroom.

Clerk McNamara read the Town Department referrals into the record.

A referral from the Board of Health was submitted on February 3, 2014 and an amended referral in the form of an e-mail was submitted 2/10/2014 wherein Mr. Carignan [Health Agent] stated he did an inspection of the single-family dwelling and finds three bedrooms in the dwelling and a study; the renovation in the existing accessory structure will meet the criteria of a bedroom and that the septic system is four a four bedroom home. He did note that a picture of the study was placed on Municipity.

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

Board Questions:

Member Johnson asked if there was a bathroom in the existing accessory structure.

Mr. Girouard stated no.

Member Foreman asked if the current accessory structure and proposed structure will have heat.

Mr. Girouard stated yes.

Member Foreman asked if there are any cooking facilities.

Mr. Girouard stated no, but that a wet bar is proposed.

Member Foreman asked if there were any sleeping accommodations.

Mr. Girouard stated that they do have family that visits and it could be used as a bedroom.

Member Foreman asked if the study in the dwelling that was formerly a bedroom has doors.

Mr. Girouard stated that the doors (two accesses) have been removed.

Member McNamara asked why the accessory structure could not be moved to meet the 10' setback requirement.

Mr. Girouard said that they are razing only the portion that is on cinder blocks and most nonconforming at 5.75', the remaining portion of the structure will remain with a 6.25' setback to the rear line and 3.33' setback to the side property line.

Member Bielan asked if they are planning a deck on the left elevation where sliders are shown.

Mr. Girouard said no.

Chairman Haddad asked if there is any intent to rent the accessory structure out ['cabana'].

Mr. Girouard said absolutely not.

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

Member McNamara 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 28 Nye Road in Falmouth contains 15,202 square feet of General Residence zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze a portion of the detached accessory structure and renovate the whole structure to use as a one-car garage in half of the structure and to create a cabana with a bathroom, play/rec room and a wet bar. Through the razing of a portion of the accessory structure there will be an improvement to the rear setback of said structure. The footprint will remain the same except for a porch area at the front elevation of the structure that will increase lot coverage by structures to 12.6%, which is well below the 20% maximum allowed in this General Residence zoned district. The single-family dwelling on subject property went from a four bedroom to a three bedroom structure as verified by the Board of Health [see e-mail to staff of 2/10/2014] and the area being renovated in the detached accessory structure meets the criteria of a bedroom; four (4) bedrooms is the limit allowed on subject property [Board of Health].

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 reconstruction of a portion of the pre-existing nonconforming detached accessory structure on subject property is not substantially more detrimental than what currently exists. The Board further finds that a portion of the accessory structure will be less nonconforming than what exists. Furthermore, the Board finds that the proposed will be an improvement in the visual character of the structure that can be seen from the public roadway.

The Board finds that through testimony of the applicant that the detached accessory structure discussed herein will remain accessory to the primary dwelling on subject property and not become a separate dwelling. The Board further finds through testimony of the applicant that there is no intention to rent the structure separately from the primary dwelling on subject property. Furthermore, the Board finds that there is no cooking facilities existing or proposed in the detached accessory structure discussed herein.

The Board finds through submission of information from the Board of Health that the primary dwelling eliminated one of the four bedrooms and converted it to a study; and testimony from the applicant that the doors were removed to eliminate any privacy. The Board further finds that the proposed floor plans to a portion of the detached accessory structure meets the criteria of a bedroom. Furthermore, the Board finds that the subject property is limited to four bedrooms.

In addition to the above findings, the Board finds that the proposed 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 razing of a portion of the detached accessory structure and renovation of same as there is no increase in the existing nonconforming setbacks, there is improvement to one nonconforming setback and there is no new nonconformity created through this approval.
- B. The site is suitable for the proposed use as the property is zoned General Residence, is used as residential and an accessory structure to a primary residential dwelling may be allowed. The subject property discussed herein and has been used and will be continued to be used as residential with an incidental accessory structure.
- 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 is basically no major change in the detached accessory structure located at the rear corner of subject property; 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 renovation of the detached accessory structure 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 Gary A. Girouard, Trustee (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct a portion of the detached pre-existing nonconforming accessory dwelling and renovate same on subject property known as 28 Nye Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing and reconstruction, all setbacks, height of structure, lot coverage and use of accessory structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan" prepared for Girouard Residence 28 Nye Road Falmouth, MA drawn by Eastbound Land Surveying, signed and dated by Robb Sykes, P.L.S. on 12/6/2013 and with a Board date 'received' stamp of December 26, 2013; and
- "Girouard Residence" architectural plans for detached accessory structure drawn by Creative Designs by Scott consisting of Drawings A1.0 Elevations and Floor plans dated 11/18/2013 and a second page showing framing plans – both with a Board date 'received' stamp of December 26, 2013.

2. There shall be no more than four (4) bedrooms on subject property. Through this Special Permit evidence has been submitted that there are three bedrooms in the single-family dwelling and the space proposed in the detached accessory structure ['cabana'] meets criteria of a fourth bedroom.

3. The room shown on a hand drawn floor plan submitted to the file on February 26, 2014 noting an 'office/study' shall not have doors at entrances and shall remain open to the living space.

4. The detached accessory structure discussed herein ['cabana'] shall remain accessory to the primary residence on subject property and shall not become a dwelling unit. This accessory structure shall not be rented separate from the primary residence.

5. There shall be no cooking facilities in the accessory structure discussed herein, which shall include, but not be limited to an oven, a stove, a hotplate, a toaster oven or a microwave oven.

6. The applicant shall draft a 'Restrictive Covenant' and submit it to the Board of Appeals for approval and sign off by the Town. The covenant language shall include language set forth in Conditions 3, 4 and 5 above restricting the use of the detached accessory structure as conditioned herein. After approval by the Board of Appeals and sign off by the Town, the applicant shall file the document with the Registry of Deeds and submit a copy of the filed document to the Board of Appeals prior to final sign off of the construction by the Building Department and the Board of Appeals.

7. 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.

8. The Applicant shall meet the requirements of the DPW Water Division.

9. 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.)

10. 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: 121-13

Applicant: GARY A. GIROUARD, TRUSTEE of Falmouth, MA

Subject Property: 28 Nye Road, Falmouth, Massachusetts
Map 47B, Section 05, Parcel 018, Lot 000

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 #121-13 Girouard / 28 Nye Rd., Falmouth / Raze and reno accessory structure posted to web 3/6/14 mm