

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 125-13

APPLICANT/OWNER: MARC CAMINETSKY, TRUSTEE of Newton, MA

DEED/CERTIFICATE: Certificate 197713 – LC Plan 48-H, Lot B-17

SUBJECT PROPERTY: 15 Salt Pond Road, Falmouth, Massachusetts
Map 47, Section 03, Parcel 064, Lot 017B

Under a date of December 31, 2013 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 of the Code of Falmouth to construct a sunroom addition to rear of pre-existing nonconforming single-family dwelling on subject property located at 15 Salt Pond 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: This hearing was scheduled for February 6, 2014 which due to a lack of quorum of the Board was rescheduled to February 27, 2014 (within the 65 day requirement under MGL Ch 40A, sec 9 and 11).

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

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

Thomas J. Bunker, P.L.S. with BSS Design, Inc. was present on behalf of the applicant Marc Caminetsky, who was present at the hearing. Mr. Bunker reviewed the site that has an existing one-story single-family dwelling with attached one-car garage and has a nonconforming setback of 9' to the easterly side yard property line. There is an existing sun porch on the southeasterly corner of the dwelling structure that required a variance in 1971 to allow said sun porch to encroach by 8" in the setback. The applicant is proposing to remove the existing sun porch and to construct a new larger sunroom attached to the rear of the dwelling maintain a complying 10.6' setback. The removal of the existing sun porch voids the Variance from 1971. The lot coverage by structures existing on subject property at 27.5% (nonconforming) will be increased to 29.5% through the proposed new sun room construction. Mr. Bunker explained that the applicant would like to add some additional habitable space for the family. The dwelling has a dirt crawl space, has no attic space and is on Town sewer. Mr. Bunker reviewed briefly the 'Lot Coverage Calculations' he submitted to the file regarding lot coverage and bulk in the general vicinity of subject property.

Mr. Caminetsky explained the additional space for family members and stated neighbors are in support of the proposed addition.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Board of Health stated that the subject property is on Town sewer.

A referral from the Engineering Department has standard comments that require filing with appropriate departments if there is any change or alteration to existing driveways or water lines.

Referrals submitted from the Building Department, Conservation Commission, Planning Department and Water Department have no comment.

Board Questions:

Member Johnson asked if the applicant thought about removing the shed to lessen the lot coverage.

Mr. Bunker stated that the applicant would rather not as there is no basement space or attic space for storage. Mr. Bunker stated that the shed has complying setbacks.

Member Foreman asked what assurances, if any, to the applicant not constructing a second floor on the existing dwelling.

Mr. Bunker stated that the Board can condition that there be no second story.
Mr. Caminetsky said he plans on retiring in the dwelling and he won't add a second story.

Member McNamara comment on the 1972 Variance for the existing sun porch to be within eight inches of the side property line and asked if the existing sun porch is removed would that eliminate the Variance on the property.

Mr. Bunker said the setback would be 9.3' but the need for Variance for the sun porch would not be necessary.

Member McNamara asked if the sunroom would be heated.

Mr. Caminetsky said that it would be as their intention is to use it as added living space.

Member Cool asked Mr. Bunker if the 29.4% lot coverage is an average in the neighborhood.

Mr. Bunker said it is not an average – it is the largest.

Member Haddad asked if the front porch would be enclosed.

Mr. Bunker stated no.

Member Foreman asked if the applicant had thought about reducing the size of the existing deck to decrease lot coverage.

Mr. Caminetsky stated that deck has existed for 30 years and it is an integral part of the home and gathering area for the family.

Member McNamara asked if there were any plans to enclose the deck.

Mr. Bunker stated no.

Board discussed:

Member Foreman said if you look at the numbers it doesn't look good; but when you visit the site – all is in the rear of the dwelling – no additional bulk - is inclined to approve.

Member Johnson said it is okay with her as it cannot be seen from the street.
Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Member Bielan said she agrees; there is abutter's support and it is in keeping with other properties in the general area.

Member McNamara said the 'bulk' calculations are very valuable; the lot coverage could or could not mean a lot; the bulk is what is important. The applicant needs to have something for storage. This Board can protect things by conditions. As a one-story this is more in keeping with the neighborhood; a second story will be out of character and adds bulk. The need for a variance has been extinguished.

Chairman Haddad asked the applicant if there is any intent to add additional accessory structures.

Mr. Caminetsky stated no.

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 15 Salt Pond Road in Falmouth contains 8,736 square feet of Residential C A zoned land that is located with the Salt Pond Coastal Pond Overlay District. The subject property has a Variance that was approved on January 6, 1972 allowing a sun porch 8" closer to the sideline. The dwelling structure is 9.3' to the side yard property line where a 10' setback is required pursuant to Section 240-68 B. of the Code of Falmouth [the sun porch is 9.0' from property line]. The lot coverage by structures is nonconforming at 27.5% which exceeds the 20% maximum in a residential district pursuant to Section 240-69 A. of the Code of Falmouth; and further exceeds the 25% allowed by special permit under Section 240-69 E. of the Code of Falmouth. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a sunroom addition at the rear of the existing single-family dwelling and remove existing sun porch. The existing sun porch was the basis of the variance; the sun porch will be removed and the variance extinguished through this Special Permit approval. The applicant is renovating the attached garage to create additional bedroom/living space. The applicant is removing the existing sun porch and constructing a sunroom that will be in compliance with setback requirements [10.6' setback]. There is no additional bedrooms through this special permit approval. The Board reviewed the proposed plans and found that the bulk calculations submitted to the file help to substantiate, along with the proposed addition in the back yard and not visible from the roadway; that the proposed is in keeping with neighborhood.

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 removal of the existing sun porch and the construction of a new sunroom addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed removal of the existing sun porch eliminates the variance issued in January of 1972. Furthermore, the Board finds that the proposed sunroom addition is setback 10.6' from the side yard setback and that the dwelling remains at 9.3' setback.

The Board finds that the lot coverage existing at 27.5% will be increased to 29.4% which is an increase herein approved.

The Board finds through testimony of the applicant that no second story on the dwelling structure or any appurtenances thereto will be constructed. The Board further finds through testimony of the applicant that the front porch and rear deck will not be enclosed.

The Board finds through testimony of the applicant that the shed will remain as it is required for storage due to the lack of a basement or attic in dwelling structure.

The Board finds that the proposed addition of a sunroom is an improvement to the utilization of the dwelling by its residents.

In addition to the above findings, the Board finds that the proposed sunroom 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 sunroom even though there will be an increase of lot coverage by structures from 27.5% to 29.4% as the proposed sunroom will not be visible from the roadway and will be a one-story addition.

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 through this special permit 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 subject property is on the Town sewer system as stated on Board of Health referral submitted to the file.

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

G. The proposed sunroom 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 Foreman made a motion to Grant the Special Permit with conditions. Member Johnson 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 Marc Caminetsky (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to remove existing sun porch and construct a sunroom increasing the lot coverage on subject property at 15 Salt Pond Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The removal of the existing sun porch, the construction and location of proposed sunroom, all setbacks, height of addition, lot coverage and use of proposed sunroom 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 Marc Caminetsky 15 Salt Pond Road Falmouth, Massachusetts drawn by BSS Design, Inc., signed by Thomas J. Bunker on 12/31/13 and with a Board date 'received' stamp of 12/31/2013; and

- "Interior Alterations to Caminetsky Residence" 15 Salt Pond Road, Falmouth, MA drawn by Custom Home Design, Inc., consisting of Drawing A-1 and A-2, both dated December 23, 2013 with a Board date 'received' stamp of December 31, 2013.

2. This approval by the Board of Appeals is only for the sunroom addition attached to the rear of the dwelling.

3. There shall be no second floor addition to the pre-existing nonconforming single-family dwelling on subject property discussed herein. The applicant gave testimony at the hearing that he does not intend to add a second floor to this dwelling or the sunroom approved herein.

4. There shall be no sleeping accommodations or bedrooms created within the sunroom discussed represented herein.

5. The front porch shall not be enclosed.

6. The deck at the rear of the dwelling shall not be enclosed.

7. The existing shed that was represented at the hearing to be no more than 100 square feet in size shall not be increased or replaced with a larger shed.

8. 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.

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: 125-13

Applicant: MARC CAMINETSKY, TRUSTEE of Newton, MA

Subject Property: 15 Salt Pond Road, Falmouth, Massachusetts
Map 47, Section 03, Parcel 064, Lot 017B

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 #125-13 Caminetsky / 15 Salt Pond Rd / Sunroom Add'n posted to web 3/7/14 mm