

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 122-13

APPLICANT/OWNER: PAUL G. HARRINGTON and MAUREEN C. HARRINGTON  
of East Falmouth, MA

DEED/CERTIFICATE: Book 14168 / Page 127

SUBJECT PROPERTY: 382 Carriage Shop Road, East Falmouth, Massachusetts  
Map 29, Section 01, Parcel 007, Lot 001

Under a date of December 27, 2013 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 3 of the Code of Falmouth to construct a 9' x 16' addition with basement, creating a new kitchen, in the second dwelling on subject property located at 382 Carriage Shop Road, East 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 and due to a lack of quorum of the Board of Appeals, it was rescheduled to February 27, 2014 [within the 65 day process pursuant MGL Ch40A, 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.

Paul Harrington, applicant/owner, was present and explained to the Board that the subject property was once a 6 acre lot and that it was subdivided in 2004 to a 2.69 acre lot. In reviewing the site he said the front dwelling (off Carriage Shop) was constructed approximately in 1925. A second dwelling that he calls the cottage (facing Woodhaven Road) was built before 1959 and has been occupied since then. In 2004 he received a Special Permit, #50-04 that acknowledged the existence of two dwellings on a lot. There is also a garage structure located between the two dwellings that he uses as storage. Mr. Harrington said he would like to improve and increase the kitchen in the cottage by constructing a small addition to the northwest corner of the structure; he will be putting a basement below addition as well. There are two bedrooms in the 'cottage' structure and it will remain a two bedroom structure.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Conservation Commission states: Note: State jurisdiction only – located within Natural Heritage and Endangered Species Program, Priority Habitat and Habitat for Rare Wildlife.

A referral from the Engineering Department had standard comments stating any changes within the public right of way would require filing a permit with the Engineering Division and that any connections or alterations to public utilities would require permission from appropriate Town Department(s).

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

Clerk McNamara noted that there was no correspondence submitted to the file from abutters or interested parties.

Board Questions:

Member Johnson asked if the 'cottage' has been occupied year round.

Mr. Harrington stated yes.

Member Johnson asked facilities are in the garage.

Mr. Harrington stated that in 2004 they kept the same plans and made it into a three car garage and use it as a workspace and store equipment in it.

Member Johnson asked if they were keeping the shed.

Mr. Harrington stated yes.

Member McNamara asked if there was a basement plan and what the use of the basement would be.

Mr. Harrington stated the basement plan is on the back of plans submitted and that there is an existing basement that the bulkhead leads to under the bedroom, it is standard eight feet and is used for storage and not finished.

Chairman Haddad asked if there are any cooking facilities within the garage structure.

Mr. Harrington stated no.

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

There was no public comment.

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 382 Carriage Shop Road in East Falmouth contains 2.69 acres of Agricultural A zoned land that is located within the Childs River Coastal Pond Overlay District, the Wild Life Corridor and the Native Habitat for Endangered Species Program. This lot was once a six (6) acre parcel that was subdivided and the current lot is 2.69 acres. In 2004 a Special Permit, #50-04, was approved that acknowledged the two dwellings on the 2.69 acre lot with conditions that there be no more dwelling units constructed, no conversion of existing dwellings (2) into more dwelling units, that there be no home occupations or boarders allowed and that any further subdivision of the subject property would render Special Permit #50-04 void. The property is nonconforming in that it does have two (2) dwellings on said property where Section 240-34 under "Agricultural Districts" permit one-family detached houses. The lot coverage by structures and structures, parking and paving comply with Section 240-69 A. of the Code of Falmouth. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a 9' x 16' addition to the rear corner of the second dwelling unit [cottage] to improve the existing kitchen and create a new basement entrance. There are two bedrooms in the cottage and that number will not be increased. There are three (3) structures on the 2.69 acre parcel; one is the single-family dwelling circa 1925 off Carriage Shop Road, the second is the rear structure facing Woodhaven Road, subject structure, that is a two-bedroom single-story dwelling unit that according to Special Permit #50-04 was created prior to 1959 and in the middle of the two dwellings is a detached garage structure that is used as a garage, workshop and storage for equipment. The detached garage structure does not have any cooking facilities and no habitable space.

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 addition to the second dwelling on subject property known as the 'cottage' is not more substantially detrimental than what currently exists. The Board finds that the

proposed addition will be an enhancement to the utilization of the dwelling by its residents. Furthermore, the Board finds that the proposed addition does not create any new nonconformities on subject property.

The Board finds through testimony by the applicant/owner that the existing basement of the second dwelling unit, subject herein, is for storage of mechanical utilities and is not finished.

The Board finds that Special Permit #50-04 acknowledged the existence of two dwellings on a lot prior to 1959 and conditioned the use that the structures could not be converted to multiple dwelling units; no more than two dwelling units on the property; no home occupations or taking of boarders; and that further subdivision of the lot would render Special Permit #50-04 void.

The Board finds that the proposed change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

In addition to the above findings, the Board finds that the proposed addition to the second dwelling on subject property 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 for the proposed addition to the second dwelling to improve the kitchen area and create a new basement entrance.
- B. The site is suitable for the proposed use as the property is zoned Agricultural and is used as a residence 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; 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 by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling 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 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 Paul G. and Maureen C. Harrington (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a 9' x 16' addition to the rear corner of the second dwelling on subject property located at 382 Carriage Shop Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition to the second dwelling, all setbacks, lot coverage and use of dwelling unit 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 Paul Harrington of 382 Carriage Shop Road, East Falmouth, MA, Sheet 1 of 1 drawn by J.E. Landers-Cauley, P.E. dated 12/23/13 and with a Board date 'received' stamp of December 27, 2013; and
- "Existing Cottage Remodel" architectural plans consisting of eight (8) pages that show elevations, floor plans and framing plan – no author or date on plans – all have a Board date 'received' stamp of December 27, 2013.

2. There shall be no sleeping accommodations or bedrooms created within the basement area of this dwelling unit discussed and noted herein as 'cottage'.

3. There shall be no derogation whatsoever from any conditions set forth in Special Permit #50-04 for

this property and its dwellings, except as stated herein.

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: 122-13

Applicant: PAUL G. HARRINGTON and MAUREEN C. HARRINGTON  
of East Falmouth, MA

Subject Property: 382 Carriage Shop Road, East Falmouth, Massachusetts  
Map 29, Section 01, Parcel 007, Lot 001

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 #122-13 Harrington / 382 Carriage Shop Rd. / Add'n to 2nd dwelling posted to web 3/7/14 mm

