

Zoning Board of Appeals Decisions Decisions for: 01-09-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 116-13

APPLICANT/OWNER: MICHAEL P. HOGAN and JACQUELINE S. CONRY
of Falmouth, MA

DEED/CERTIFICATE: Book 3114 / Page 341

SUBJECT PROPERTY: 11 Packet Lane, Falmouth, Massachusetts
Map 47, Section 06, Parcel 060B, Lot 003

Under a date of December 10, 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 modify Special Permit 20-1 and construct a second story addition to the pre-existing nonconforming three-bedroom, single-family dwelling known as 11 Packet Lane, Falmouth, Massachusetts.

A public hearing was held on January 9, 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 Matthew J. McNamara, Vice Chairman Kenneth Foreman, Clerk Scott Zylinski, Member Patricia Johnson and Member David Haddad

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

Nason Swain, Contractor, was present on behalf of the Applicant and reviewed existing conditions and proposed second story addition to the single-story, three-bedroom dwelling. Mr. Swain explained that the existing three bedroom dwelling will remain a three bedroom dwelling. The construction of a second floor is to relocate two of the bedrooms from the first floor to the second floor, adding a bathroom and a loft area. The one remaining bedroom on first floor will become a master bedroom with one of the existing bathrooms incorporated within it. The second bathroom will remain as exists. The second story addition will create a 1.5 story dwelling as the addition will be above the westerly half of the existing dwelling only. The attached two-car garage will remain a two-car garage.

Clerk Zylinski read the Town Department referrals into the record.

A referral submitted by the Engineering Department noted that storm water shall be contained on site; the project cannot direct any storm water runoff to public property or right of ways.

A referral submitted by the Board of Health Agent David Carignan states: The existing dwelling has three bedrooms. The proposed alterations yield three bedrooms according to the plans in the file. No objections as long as the structure remains a three bedroom dwelling.

A referral from the Water Department noted a 1" existing service.

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

Clerk noted that there was no correspondence submitted to the file.

Board Questions:

Member Haddad asked if the only nonconformity is the 7.2' setback at the cut-in of the road for what appears to be a turn around.

Mr. Swain stated that is correct.

Chairman McNamara asked for clarification on designated closet areas [large] that are closed to hallway. He then asked what the basement is used for.

Mr. Swain said the basement is finished area – no bedrooms.

Member Foreman asked what the proposed height of the second floor addition would be.

Mr. Swain stated 23.5’.

Chairman McNamara 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 McNamara 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 11 Packet Lane in Falmouth contains 17,289 square feet of Residential C zoned land that is not located within any overlay district. The Applicant applied under Section(s) 240-3 of the Code of Falmouth to modify a previous permit and allow construction of a second floor addition above the westerly half of the existing one-story dwelling. The dwelling has a nonconforming setback of 7.2’ to a cut in turn-around in the front property line off Packet Lane that should be a 25’ setback under Section 240-68 A. of the Code of Falmouth. The subject property was granted a special permit in 2011 to raze a portion of the existing deck and construct an addition to increase the kitchen/dining area and add a bathroom, which work was completed in 2011; this special permit will modify the dwelling structure to include a second story over half of the existing one-story dwelling. The second story addition will allow the relocation of two bedrooms from the first floor to the second floor; renovating the remaining bedroom into a master bedroom and bath with walk-in closets. The proposed addition does not increase existing footprint; and lot coverage by structures is and will remain in compliance with Section 240-69 A. of the Code of Falmouth.

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 second floor addition to the pre-existing nonconforming, one-story three-bedroom single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that the subject property is the only property remaining as a one-story dwelling; all other dwellings on Packet Lane are either 1.5 story or two-story dwellings. Furthermore, the Board finds that there is no increase in the existing nonconforming setback; and there are no new nonconformities created through this application.

The Board finds that the existing dwelling has three bedrooms and the proposed addition of a second floor does not increase the number of bedrooms – it simply relocates two to the proposed second level. The Board further finds that the referral from the Board of Health states no objection to the proposed second floor addition if the bedroom count remains at three bedrooms, which the plans and representation of application herein show to be the case.

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 of the criteria 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 second floor [half floor] as it does not increase lot coverage by structures – which is in compliance – nor does it increase the existing nonconforming

setback at the front of subject property.

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 neighborhoods visual character as all other dwellings on Packet Lane are 1.5 or two story dwellings; 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 approved by Board of Health as long as there is no increase to the number of three bedrooms existing on subject property.

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

G. The proposed second story addition to the existing single-family 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 Foreman 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 as a modification to previous Special Permit to Michael and Jacqueline Hogan (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a second floor addition to the one-story, three-bedroom single-family dwelling on subject property known as 11 Packet Lane, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the second floor [1/2 story], all setbacks, height of second floor, lot coverage and use of second floor shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan" for Michael P. Hogan & Jacqueline S. Conry for 11 Packet Lane drawn by Costa Associates, Inc. dated 9/25/13 with a Board date 'received' stamp of December 10, 2013;
- "Plans" ` First Floor Plan Sheet A1.0 drawn by A&E Architects dated 12/14/10 with final revision of 4/25/11 and a Board date 'received' stamp of December 10, 2013;
- "Elevations" Sheet A2.0 – existing elevations drawn by A&E Architects dated 12/14/10 with final revision of 4/25/11 and a Board date 'received' stamp of December 10, 2013; and
- "Plan" proposed architectural plans, Sheets A1.1, A1.2, A2.0, A2.1, A3.0, S1.2 and S2.3 all dated with a 'Permit set date of 11/15/2013' [Drawings include First and Second floor plan, elevations, section and framing plan] and all with a Board date 'received' stamp of December 10, 2013.

2. There shall be no more than three (3) bedrooms on subject property.

3. There shall be no bedrooms or sleeping accommodations created within the basement area.

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: 116-13

Applicant: Michael P. Hogan & Jacqueline S. Conry
of Falmouth, MA

Subject Property: 11 Packet Lane, Falmouth, Massachusetts
Map 47, Section 06, Parcel 060B, Lot 003

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 a modification of previous Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Matthew J. McNamara, 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 #116-13 Hogan / 11 Packet Ln / 2nd story add'n posted to web 3/6/14 mm