

Zoning Board of Appeals Decisions Decisions for: 01-23-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 111-13

APPLICANT: RICHARD J. MORRISON of Wellesley, MA

OWNER: Richard J. Morrison and Marian Z. Morrison

DEED/CERTIFICATE: Book 24647 / Page 172

SUBJECT PROPERTY: 41 Morris Street, Teaticket, MA
Map 39, Section 08, Parcel 004, Lot 093

Under a date of November 26, 2013, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition to the rear façade of the dwelling structure to increase kitchen and dining area and to add a deck exceeding 20% lot coverage by structures on subject property located 41 Morris Street, Teaticket, Massachusetts.

A public hearing was held on January 23, 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, Clerk Scott Zylinski, Member Patricia Johnson and Associate Mark Cool

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

Patricia Sciuto with Harbor Homes was present on behalf of the Applicant and reviewed existing site conditions and proposed addition to the existing single-family dwelling. She explained that the additions will be to the rear of the dwelling; first floor level addition will basically be constructed where existing deck is and will be to create a dining room and increase kitchen area; the second floor dormer will be to increase the head room in the existing master bedroom and the second floor bathroom. A new deck addition will be added to the rear of the proposed addition. The lot coverage is being increased from 16.4% to 21.8%. Ms. Sciuto explained that the cantilevered chimney shown on the plan will be recessed into the dwelling so as not to create a nonconforming setback. She said this is a three (3) bedroom dwelling and it will remain a three (3) bedroom dwelling through the proposed alteration/addition. The addition to the pre-existing nonconforming single-family dwelling will not increase the nonconforming front yard setback and no new nonconforming setbacks will be created through this addition.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Board of Health Agent states: As I understand the scope of the proposed project, there are three bedrooms in the existing dwelling, the Assessor's Department recognizes it as such and there are three bedrooms at project completion. No objections.

A referral from the Engineering Department had standard comments regarding a change in water or utilities will require a permit through appropriate department.

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

Board Questions:

Member Cool asked what the area outside of the master bedroom on the second level is and if it will remain cased opened as shown on the "proposed second floor plan" submitted.

Ms. Sciuto said it will remain opened as shown – family area.

Member Cool asked if consideration of decreasing size of deck was discussed to conform to lot coverage requirements.

Ms. Sciuto stated that the Applicant is not present; this is the plan they designed.

Member Cool asked if the general area where the property is located has similar lot coverage percentages over 20%.

Ms. Sciuto said she did not know.

Member Johnson asked if there is a basement, is it finished.

Ms. Sciuto said it is a full basement, proposed addition will have basement as well and that all basement space is unfinished and there is no intent to finish the spaces.

Member Johnson asked if the front façade of the dwelling will remain the same, including height.

Ms. Sciuto stated yes.

Member Johnson commented that the lot coverage comparison in the area is important and asked if it was considered.

Ms. Sciuto stated no.

Member Zylinski asked what the height of the proposed addition will make the structure.

Ms. Sciuto said it will not exceed 35' – does not have height calculation.

Chairman Haddad asked if the dwelling will remain a three (3) bedroom dwelling and asked what basement is used for.

Ms. Sciuto stated the dwelling will remain a three (3) bedroom dwelling and the basement is used for storage and utilities.

Chairman Haddad asked if space under deck will be used for storage.

Ms. Sciuto said no – storage is in basement; the area under the deck will be gravel surface.

Chairman Haddad asked if stormwater runoff will be contained on subject property.

Ms. Sciuto stated yes.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member Cool 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 41 Morris Street in Teaticket contains 8,127 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District. The Applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to allow an addition to the first floor level at the rear of the existing dwelling where deck is located to create a dining room and increase kitchen

area, add a second floor dormer to increase the head room in existing master bedroom and second floor bath and add a new deck off the proposed first floor addition. The dwelling has a nonconforming front yard setback of 20.2' to the front property line off Morris Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. Lot coverage by structures is conforming at 16.4% pursuant to Section 240-69 A. of the Code of Falmouth. The proposed addition and deck will increase the lot coverage by structures exceeding the 20% maximum, however, Section 240-69 E. of the Code of Falmouth allows lot coverage by structures to exceed the 20% up to 25% after Board considers certain values of the property and neighborhood. There are three (3) bedrooms existing in the single-family dwelling discussed herein and there is no intent to increase the bedroom count through this special permit.

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 at first floor, dormer at second level and deck addition to the pre-existing nonconforming single-family dwelling on subject property is not substantially more detrimental than what currently exists as the additions will be to the rear of the property and will not be seen from the roadway. The Board further finds that the dormer at the second level rear façade of the dwelling will enhance the utilization of the master bedroom and adjacent bathroom on second floor.

The Board finds that the Applicant's representative did not have the height of the existing structure on front or rear elevations [where additions are proposed] so the Board would like to have heights on each elevation of dwelling submitted to the Board prior to issuance of a building permit.

The Board finds through testimony of the Applicant's representative that the area below the proposed deck shall be gravel surface and not be used as storage.

Section 240-69 of the Code of Falmouth – "Minimum lot coverage.", subsection E. allows a property owner to apply to the Board of Appeals to exceed the maximum lot coverage by structures allowed after the Board considers if the proposed changes of a structure – size and height are in keeping with the neighborhood, if the project will have a shadow effect on adjacent properties, if there is any impact on a view or vista and if there is any effect of nitrogen on coastal embayments.

The Board finds that the proposed additions meet the criteria of Section 240-69 E. as the proposed additions cannot be seen from the roadway, the height of the existing dwelling is not impacted, there is no shadow effect on adjacent properties, the proposed plans appear to be in keeping with the neighborhood and there is no effect on coastal embayments. The Board further finds that the Applicant's representative did not submit facts on the general neighborhood's lot coverage, i.e. how many, if any, are over the 20% lot coverage by structures; and the Board feels that lot coverage by structures being increased from 16.4% to 21.8% is a substantial increase and additions proposed can be held to the 20% maximum.

The Board finds through plans submitted and testimony by the Applicant's representative it is represented that there will be no increase to the number of bedrooms existing within dwelling currently as three (3). The Board further finds that the basement space existing is unfinished and that the proposed additional basement space will be unfinished as well, with no intent to create a bedroom or any sleeping accommodations within said basement space. Furthermore, the Board finds through testimony of the Applicant's representative that there is no intent currently to create habitable space within the existing and proposed basement area.

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 addition to the existing kitchen and dining area, the second floor dormer to increase head room of master bedroom and increase the second floor bathroom as the proposed will not increase the existing nonconforming front yard setback nor will the changes create any new nonconforming setback on 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 unchanged as the proposed additions will be at the rear of the existing dwelling and will not have any impact on the neighborhood's visual character in the surrounding area; 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 three 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 proposed additions 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 Foreman 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 Richard J. Morrison (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a first floor addition over existing deck, a second floor dormer at master bedroom and construct a new deck off the rear of proposed addition to the pre-existing nonconforming single-family dwelling located at 41 Morris Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The construction of additions noted herein, setbacks, shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan 41 Morris Street in Falmouth, Massachusetts" drawn by Costa Associates, Inc. dated 10/22/13 with a revised date of 10/25/13 and with a Board date 'received' stamp of November 26, 2013; and

- Computer generated architectural plans consisting of six (6) pages that include elevations and floor plans existing and proposed with a Board date 'received' stamp of November 26, 2014.

2. The Applicant shall submit revised elevation, floor plans and "Certified Plot Plan" showing the change of the fireplace chimney being incorporated into existing footprint to maintain compliance of side yard setback (northerly façade). The revised plans shall be submitted to the Board of Appeals prior to issuance of a building permit.

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

4. The Applicant is required to submit to the Board of Appeals verification of height on each elevation of the dwelling existing and proposed by the architect and/or engineer. Said verification of height shall be submitted prior to issuance of a building permit.

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. All stormwater shall be contained on subject property.

7. The Applicant shall be required to apply to the Board of Appeals for any accessory structure(s) proposed to be located on subject property.

8. 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.)

9. 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: 111-13

Applicant: RICHARD J. MORRISON of Wellesley, MA

Subject Property: 41 Morris Street, Teaticket, MA
Map 39, Section 08, Parcel 004, Lot 093

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 #111-13 Morrison / 41 Morris St. / Addition posted to web 1/28/14 by mm