

Zoning Board of Appeals Decisions Decisions for: 01-07-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 85-13

APPLICANT/OWNER: DIANA DURCAN CUDDY of Mansfield, MA

DEED/CERTIFICATE: Book 17759 / Page 209

SUBJECT PROPERTY: 350 West Falmouth Highway (Condo 3), W. Falmouth, MA
Map 25, Section 02, Parcel 016A, Lot 003U

Under a date of August 27, 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 construct a two-story addition, creating additional living space, to the pre-existing, nonconforming single-family dwelling unit (Condo 3) at 350 West Falmouth Highway, West Falmouth, Massachusetts.

A public hearing was opened on October 10, 2013. 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. At the October 10, 2013 the Board did not take testimony but voted unanimously to continue the hearing to November 7, 2013 based on written request by the Applicant. On November 7, 2013, again Applicant requested in writing to continue the hearing to December 12, 2013 and the Board voted unanimously to continue the hearing to December 12, 2013 at 6:30 pm. At the December 12, 2013 hearing testimony and public comment was heard.

Board Members sitting: Chairman Matthew J. McNamara, Clerk Scott Zylinski, Member Patricia Johnson, Member David Haddad and Associate Mark Cool.

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

Thomas J. Bunker, P.L.S. with BSS Design, Inc. was present, along with the Applicant, and reviewed the existing and proposed site conditions for the Board. Mr. Bunker explained that the subject property is a 35,748 square foot lot that has three existing dwelling units that have existed for at least 60 years. The subject dwelling is nonconforming with a 31.5' setback to Route 28A which requires a 35' setback. The Applicant is proposing to incorporate a portion of the existing dwelling into a two-story addition to the dwelling that will increase the unit from a one-bedroom to a two-bedroom unit while renovating and increasing habitable space within. The lot coverage by structures will increase from 8.3% to 9.2% on subject property; and the addition will not increase the Applicant's 'exclusive lot area' above 20%. Mr. Bunker explained that application was made to Conservation Commission and received approval with Order of Conditions dated November 5, 2013, which included a condition that planting mitigation be done as shown on the "Plot Plan" submitted with a final revision date of November 5, 2013 [note planting mitigation on both sides of the front lawn off West Falmouth Highway]. The proposed addition will not increase the nonconforming front yard setback. Mr. Bunker said that one condo owner submitted approval of the plans and the second condo owner is present tonight.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Historical District Committee states: Certificate of Appropriateness and associated plans have been approved and are on file. (dated 9/4/2013)

A referral from the Water Department was returned to the ZBA office with an attachment for a waiver with a note from G.P. stating that the 'Water Department cannot force the condominium owners [on subject property] to upgrade. They must sign a waiver.'

A referral from the Conservation Commission dated 10/1/2013 notes that a 'Notice of Intent' hearing is scheduled for 10/2/2013 - has to conform to DCPC.

Referrals submitted from the Planning Department, Engineering Department and Natural Resources had

no comment.

Board Questions:

Chairman McNamara noted that the plan had changed since the Historic District Committee issued a 'Certificate of Compliance' and asked if we will be receiving a revised 'Certificate'.

Ms. Cuddy stated she had filed a new application and will hopefully get a hearing date in January of 2014.

Member Haddad asked if the other two condo owners on subject property have approved the plans proposed.

Ms. Cuddy stated that she received an approval from Steve Mueller but forgot to forward it to the staff; the other condo owner, Mr. Parrish is present.

Member Haddad asked about parking and drainage on site.

Mr. Bunker explained that each unit [3 units] has two deeded parking spaces and pointed out on plan where they are located at each unit. He said there is no drainage on site and that they have added dry wells for Applicant's dedicated lot area based on Conservation Commission Orders.

Member Haddad asked if the 12" Poplar tree located close to southeast corner of proposed foundation will be removed and if so any proposed landscaping.

Mr. Bunker stated the Poplar will be removed and showed on the plans where the mitigation plantings for Conservation Commission will be located – 376 square feet of plantings.

Ms. Cuddy said she had no plans for plantings at foundation but would like plantings along driveway.

Member Haddad asked if the dwelling will be rented out or used by Applicant as residence.

Ms. Cuddy said she will be living there – no plan to rent out.

Member Cool asked Mr. Bunker about the change on the plan from gravel porch area to concrete patio [3rd page, right elevation on arch. Plans].

Mr. Bunker said it will be crushed stone – not concrete.

Member Cool asked if there was any intent to upgrade water service.

Ms. Cuddy stated not at this time.

Member Johnson asked where water service is and if each unit had separate service.

Mr. Bunker showed on plan [north end of dwelling] where water for subject dwelling is and stated that each unit has separate service and that the service for the other two dwellings on site is located under driveway.

Member Zylinski asked if the proposed piers have any impact on septic tank.

Mr. Bunker explained tank location and said that the tank is self-supporting and the piers location and excavation for the piers will not affect or compromise the tank.

Member Zylinski asked where snow removal would be placed on property.

Ms. Cuddy stated she is not in residence in winter and does not know if property is plowed.

Chairman McNamara asked about the Order of Conditions – anything specific?

Mr. Bunker stated just the plantings conditioned need to be away from water due to being located in a DCPC.

Chairman McNamara asked what the height of the plantings are as proposed.

Mr. Bunker said typical native shrubs we put in at 2 ½ feet that can grow to 6 feet.

Chairman McNamara commented that the addition is a 9.5 foot increase to front façade of dwelling and asked if it impacted the view and vista from the roadway.

Mr. Bunker stated the only area it is encroaching is where the 12" Poplar tree was.

Chairman McNamara asked what the existing height of the dwelling is.

Mr. Bunker stated 17'.

Chairman McNamara asked if Applicant thought of 2nd floor addition on north side of dwelling.

Mr. Bunker said one issue is they can't extend 9.5' northerly; and second the foundation is different on north side and won't support 2nd floor – existing is crawl space - proposed typical basement under half as shown on architectural plan.

Ms. Cuddy explained the unit was constructed in 1910 and she would like to keep a lot of aesthetic values that are existing.

Chairman McNamara asked if she contacted a structural engineer to insure existing foundation will not be compromised.

Ms. Cuddy explained she did and has stamped plans that are on file with the Historic District Committee – she will pick them up.

Public Comment:

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

Jeff Parrish owner of Condo 2 known as 352 West Falmouth Highway is in favor of the revised plan. He spoke on number of bedrooms and is in favor of this being a two bedroom unit – but not a three bedroom; he said the plan is in keeping with the area; and that he was interested in the plantings and the protection of the vista from 28A. He noted that the existing Poplar is 50' tall and has a girth of 8 – 10 feet.

Member Zylinski asked Mr. Parrish about snow removal.

Mr. Parrish stated that condo docs state plowing; he said he is only year-round resident on the property and only plows when extensive snow falls and that snow removal stays on site.

Chairman McNamara asked Mr. Parrish the height of hedges near his dwelling.

Mr. Parrish stated some are 8 or 9 feet tall but that he does not want the shrubs along the driveway more than 3' in height.

Chairman McNamara asked if a condition of plantings [within view area between subject unit and driveway] being maintained at 3' would affect the Order of Conditions by Conservation.

Mr. Bunker stated that Conservation Commission requires plantings to natural height – species can be chosen specifically.

Chairman McNamara discussed with Mr. Bunker the possibility of moving the mitigation plantings conditioned by the Conservation Commission to the northeast corner of the property. Mr. Bunker stated it may be possible to get administrative approval from Conservation.

Board Discussion:

Member Haddad said he liked the revised plan that is before the Board; the view appears to not be impacted and he would like to see hedge not to exceed 3' in height ['view area' discussed as approximately 35' from southeast corner of subject dwelling straight southerly to driveway]; all plantings within view corridor should be maintained so as not to exceed 3' in height.

Chairman McNamara noted that the Board does not have up to date Order of Conditions for changes in plans that are now in front of this Board, no updated 'Certificate of Appropriateness' from the Historic District Committee, no signed approval from the condo association; and he suggested the Board needs amended condo documents allowing the additional bedroom for this unit and engineer stamped plans.

Member Johnson stated that the size of the addition is appropriate and that she would like to prohibit any plantings that will affect the view/vista from the roadway.

Member Cool said he echoes the Board's comments.

Chairman McNamara said he does not want to prohibit owner's rights on plantings but the view is the venue of this Board to protect. As discussed by the Board the 'view corridor' on the property from the roadway shall be from the southeast edge of subject dwelling to Mueller's dwelling [approximately 35' opening as view corridor and the Board should condition plantings in this corridor to be no more than 3' in height. Discussed concern with condominium documents and filing with Historic District.

Mr. Parrish stated that there has been discussion about relocating a Japanese White Pine to where a sick Apple Tree is located within the mitigation planting area conditioned by Conservation right at front property line by northeast corner of driveway [see plan]. Mr. Parrish stated that the White Pine will be located 4 to 5 feet closer to the driveway than the Apple tree and will not impact the 'view corridor'.

Board had no issue with the relocation of the Japanese White Pine.

Member Cool made a motion to close the hearing. Member Johnson 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 350 West Falmouth Highway in West Falmouth contains 35,748 square feet of Residential B zoned land that is located within the Great Sippewissett Marsh Coastal Pond Overlay District and is partially within the Historic District [subject dwelling is located within Historic District]. The Applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a two-story addition to the existing one-story dwelling. The dwelling has a nonconforming setback to the front property line off West Falmouth Highway that requires a 35' setback pursuant to Section 240-68 A. of the Code of Falmouth. The property is also nonconforming in that it is zoned Residential B and has three single-family dwellings located on the lot, where only one dwelling is allowed on a Residential zoned lot pursuant to Section 240-19 of the Code of Falmouth. According to Town records the dwellings have existed approximately, since 1910. The subject dwelling is a one-bedroom one-story unit that is proposing a two-story addition being constructed to said dwelling. The proposed plans include increasing existing footprint, creating a second story on half of the unit and increasing the bedroom count to two bedrooms. The plan allows for the existing unit to have more living space and a second bedroom. There will be a basement under proposed addition. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth and will maintain compliance through the proposed plans.

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 pre-existing nonconforming dwelling on subject property is not substantially more detrimental than what currently exists. The Board further finds that there will be no increase on existing nonconforming setback from the subject dwelling to the front property line and no

new nonconformities are being created through the proposed plans reviewed and discussed herein.

The Board finds that the Applicant has been before the Conservation Commission and received approval on November 5, 2013 with 'Order of Conditions' being issued. The Board further finds that the Applicant has, since Conservation's 'Order of Conditions' have been issued, changed the plans and may now be required to file for administrative review with Conservation.

The Board finds that the Applicant filed with the Historic District Committee and has received a 'Certificate of Compliance'. The Board further finds that that Applicant has revised plans since receiving Historic District's approval and is required to re-file with Historic. Furthermore, the Board finds through testimony of the Applicant that she is in contact with the Historic District Committee and is scheduled for a hearing in January.

The Board finds through testimony of the Applicant that she may meet with the Conservation Commission to revise mitigation plantings so that a 'natural height' of an approved planting that may be within the 'view corridor' discussed herein, will not impact the view/vista from the roadway. The Applicant discussed with this Board the possibility of relocating some of the mitigation plantings from just north of the driveway entrance as shown on the Plot Plan reviewed and noted herein, to the northerly façade of the dwelling where minor mitigation plantings are proposed and approved by Conservation Commission. This will insure the protection of the 'view corridor' on subject property noted herein being from the southeast corner of subject dwelling straight across to driveway approximately 35', keeping the opening between subject dwelling and dwelling owned by Stephen Mueller clear so as not to impact the view/vista from the roadway. Furthermore, the Board discussed and will condition below that any plantings within what is described herein as the 'view corridor' shall not exceed the height of 3' (three feet).

The Board finds that the Condominium owners on subject property [three owners] have not amended the Association documents to include the changes reviewed and approved herein. However, the Board did take testimony from condominium owner Jeff Parrish that he has reviewed the plans and is in support of proposed addition to subject dwelling; and has received communication from condominium owner Stephen Mueller that he too is in support of the proposed addition to subject dwelling.

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 addition to the front condominium dwelling unit on subject property as said addition will not increase existing nonconforming front yard setback; and lot coverage by structures on subject property is in compliance.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a multi-family residential lot such since approximately 1910.
- C. There will be no impact on traffic flow and safety from West Falmouth Highway to subject property as the increase of one bedroom on the property will have a benign effect; 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 the Board will insure through conditions below, that there will not be any adverse impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and will be upgraded to increase capacity to accept a second bedroom in subject dwelling.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Condominium Association on subject property should contact the Town Water Department regarding updating of water service or signing a waiver.
- 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 Johnson 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 Diana Durcan Cuddy (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a two-story addition to the pre-existing nonconforming one-story single-family dwelling unit on subject property that has three dwelling units and is known as 350 West Falmouth Highway, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The two-story addition, setbacks, lot coverage, height of finished structure, septic system, plantings and use of subject dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan – Proposed Addition" at 350 West Falmouth Highway West Falmouth, MA prepared for Diana Cuddy dated August 27, 2013 with a final revision date of November 5, 2013, Drawing Number B21-54 drawn by BSS Design, Inc. and with a Board date 'received' stamp of November 5, 2013;
 - "Addition For Diane Durcan-Cuddy 350 W. Falmouth – Rte 28A, Falmouth, MA" architectural plans drawn by F.D. Ciambriello Architectural Design, dated 11/21/13 consisting of three (3) pages showing Elevations and Floor Plans – all with a Board date 'received' stamp of December 4, 2013. WITH the exception of page 3 'Right Elevation' showing concrete patio that will be, based on testimony of the Applicant, a gravel patio.
2. There shall be no more than two (2) bedrooms within the subject dwelling represented herein.
3. The Applicant shall submit to the Board of Appeals a copy of the Association's approval of the proposed addition to the subject dwelling. Said approval shall be submitted to the Board prior to issuance of a building permit.
4. The Applicant gave testimony that a plan stamped by a structural engineer confirming that the existing structure can withstand the proposed addition has been completed and submitted to the Planning Board. The Applicant shall submit a copy of this signed plan/letter to the Board of Appeals prior to the issuance of a building permit.
5. The Applicant stated at the hearing that she is scheduled to meet with the Historic District Committee in January of 2014 regarding changes to the plans that are now before this Board. A copy of a new or amended 'Certificate of Appropriateness' from the Historic District Committee shall be submitted to the Board of Appeals prior to the issuance of a building permit.
6. The Applicant shall submit a copy of the amended Association Agreement that was filed with the Registry of Deeds in Barnstable governing the three dwelling units (condominiums), subject property and changes to 350 West Falmouth Highway dwelling unit, including Order of Conditions by Conservation Commission and conditions by the Board of Appeals as written herein. The document shall be submitted to the Board of Appeals prior to issuance of a building permit.
7. There shall be no seasonal rental [four months or less] of the subject dwelling unit known as 350 West Falmouth Highway, West Falmouth, MA.
8. The 'view corridor', discussed herein, shall consist of the area from the southeast corner of the subject dwelling due south approximately 35', turning westerly to Unit 1. This view corridor opens up the vista between Unit 1 and 2 and along driveway towards the rear of the property and beyond to the marshlands and Beach Pond. The plantings located in this corridor, which includes the hedge along the driveway and any plantings conditioned by the Conservation Commission through their Orders of Conditions, shall be maintained so as not exceed three feet (3') in height.
9. 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.
10. The Applicant shall meet the requirements of the DPW Water Division or sign a waiver as stated in the Water Department referral.
11. 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.)
12. 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: 85-13

Applicant: DIANA DURCAN CUDDY of Mansfield, MA

Subject Property: 350 West Falmouth Highway, West Falmouth, MA
Map 25, Section 02, Parcel 016A, Lot 003U

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.

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 #85-13 Cuddy / 350 West Falmouth Hwy, Condo #3 / Add'n posted to web 1/7/14 mm