

Zoning Board of Appeals Decisions Decisions for: 01-08-2015

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 97-14

APPLICANT/OWNER: HANNES TARNAY and CHRISTINE TARNAY
of Falmouth, MA

DEED/CERTIFICATE: Book 4064 / Page 48

SUBJECT PROPERTY: 40 Queen Street, Falmouth, Massachusetts
Map 47B, Section 04, Parcel 028, Lot 000

Under a date of November 17, 2014 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 an addition to create a new kitchen within the rear unit of the existing two-family dwelling located at 40 Queen Street, Falmouth, Massachusetts.

A public hearing was opened on January 8, 2015. 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 Kimberly Bielan, Member Terrence Hurrie and Associate Mark Cool

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

Jonathan Blake of Hampton & Blake Builders is present on behalf of the applicant. Mr. Blake reviewed the existing conditions and explained the proposed plan and noted the pre-existing nonconforming setback of 3'4" from the existing structure to the westerly side yard property line that requires a 10' setback. The structure is a two-family structure with the addition proposed to the rear unit [this is a General Residence zoned district and two-family semi-detached structures are a by-right use]. The existing kitchen is quite small and the applicant would like to construct an addition to create a new kitchen with dining area and laundry facilities to enhance the existing dwelling unit. The space that was a kitchen will be used to increase the existing bathroom adjacent to the space; and the old dining area will be made into a media room and will remain open to the living room with the existing four foot (4') cased opening.

Clerk Bielan read the Town Department referrals into the record.

A referral was submitted by the Engineering Department with standard comments regarding any addition or alterations to utilities on site requires a permit and that stormwater runoff must be contained on site.

A referral was submitted by Conservation Commission Department that states: Control stormwater on property. Drywell for addition to prevent run-off onto driveway then to Queen Street.

A referral submitted from the Planning Department had no comment.

Clerk Bielan noted an e-mail from the Board of Health Agent to the Zoning Administrator commenting that there are two-bedrooms on subject property, if another bedroom is created then the Board of Health would need to review the septic capacity prior to sign off of building permit.

Board members asked what lot coverage will be and proposed setback for addition.

Mr. Blake stated that the lot coverage will remain below 20% maximum allowed and that the setback of the addition will comply with the 10' setback requirement to a side yard property line.

Chairman Haddad 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 Bielan 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 40 Queen Street in Falmouth contains 15,495 square feet of General Residence zoned land that is not located within any overlay district. There is a two-family structure on said property, which is a by-right use noted in Section 240-24 B. of the Code of Falmouth; and the unit in the rear of this structure is the subject of this application. The structure has a nonconforming setback on the westerly side yard property line of 3.4' at front unit and 3.7' at rear unit that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures and structures parking and paving will remain below the maximum allowed in the General Residence district under Section 240-69 A. through this Special Permit application. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition to the most northeasterly façade of the existing structure to create a new kitchen/dining and laundry facility for the rear unit in the structure. The subject unit has two bedrooms [one used as an office] and the proposed addition will not increase that number of bedrooms for the unit.

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 rear unit of this two-family pre-existing nonconforming structure is not substantially more detrimental than what currently exists. The Board further finds that the proposed addition to create a new and larger kitchen for the unit will be an enhancement to the utilization of the unit for the occupants. Furthermore, the Board finds that the addition will comply with the required 10' setback; there is no increase to or extension of the existing nonconforming side yard setback; and no new nonconformities created through this addition.

The Board finds that the subject dwelling unit is a two-bedroom dwelling and will remain a two-bedroom dwelling through this application as there is no increase in the number of bedrooms proposed. The Board further finds that the applicant is amenable to installing a drywell at the addition in order to contain any stormwater run-off. Furthermore, through testimony by the applicant's representative the Board finds there is no garbage disposal installed in subject dwelling unit.

In addition to the above findings, the Board finds that the proposed addition to the dwelling unit 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 addition to the rear unit of the structure as there is no change to any existing nonconforming setback and lot coverage by structures does not exceed the 20% maximum allowed by structures under Section 240-69 A.

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 addition is at the rear of the structure, 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 unaffected through this application as there is no increase in the number of bedrooms according to the plan submitted.

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

G. The proposed addition 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 Bielan made a motion to Grant the Special Permit with conditions. Member Hurrie 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 Hannes and Christine Tarnay (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an addition to create a new kitchen/dining and laundry area for the rear dwelling unit of the two-family structure located at 40 Queen Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition to the rear dwelling unit, 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:

- "Plot Plan" prepared for 42 Queen Street [town records show this to be 40 Queen Street], Falmouth, Massachusetts dated July 30, 2014 with a final revision date of 10/23/14 as drawn by Stephen Doyle and Associates;
- Hand drawn existing floor plans and addition – 2 pages both with a Board date 'received' stamp of November 17, 2014; and
- Hand drawn proposed floor plan with removal of old kitchen with a Board date 'received' stamp of January 8, 2015.

2. There shall be no more than two bedrooms within this rear dwelling unit on subject property.

3. The applicant shall have a drywell installed near the addition to be constructed in order to contain any additional stormwater run-off.

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. Because there was no referral from the Water Department, the Applicant shall contact the DPW Water Division in the event water service lines need to be upgraded due to this construction.

6. 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.)

7. 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: 97-14

Applicant: HANNES TARNAY and CHRISTINE TARNAY of Falmouth, MA

Subject Property: 40 Queen Street, Falmouth, Massachusetts

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.

Kimberly Bielan, Clerk, Board of Appeals

_____ 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 #97-14 Tarnay - 40 Queen St / kitchen add'n posted 1/21/15 mm