

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 99-14

APPLICANT: MICHAEL J. MARCONE of Falmouth, MA

OWNER(S): Michael J. Marccone and Roxanne St. Germain

DEED/CERTIFICATE: Book 27906 / Page 326

SUBJECT PROPERTY: 16 Hudson Street, Falmouth, Massachusetts
Map 46, Section 00G, Parcel 000, Lot 013

Under a date of November 24, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to remove existing three-season room and construct an addition to create a new bedroom and bath in same location for the pre-existing nonconforming single-family dwelling located at 16 Hudson 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.

Robert A. Dalpe, Contractor, was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition to the pre-existing nonconforming single-family dwelling. Mr. Dalpe reviewed the existing site conditions and the proposed removal of an 11' x 36' existing screened porch and construction in its place a 11' x 26.6' addition that will create a new bedroom and bath for the pre-existing nonconforming single-family dwelling. The existing dwelling is a one-story structure with two bedrooms and the proposed addition will create a third bedroom.

Clerk Bielan read the Town Department referrals into the record.

A referral was submitted from the Board of Health Agent that states: The existing septic serving the property is adequate for three bedrooms. If the project is allowed to go forward, a plot plan designating a reserve area for future use will be required in order for the Health Department to sign off on the building permit.

A referral was submitted by the Engineering Department with standard comments regarding any alterations to right of way or utilities would require filing with appropriate department and to maintain stormwater runoff to subject property.

A referral from the Conservation Commission was submitted and states: Control stormwater on property if contributing to driveway and onto public road.

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

Clerk Bielan noted a letter submitted to the Board of Appeals from 'Progressive Designs' stating that the highest ridge on the dwelling as proposed will be 15'6".

Member Bielan asked about foundation of proposed addition and if the bulkhead would be changed.

Mr. Dalpe stated that the addition will be on a crawl space foundation and that the bulkhead is currently located within the screened porch and the addition will be smaller in size so that the bulkhead will no longer be enclosed.

Member Hurrie asked if the basement was unfinished and how stormwater run-off would be contained.

Mr. Dalpe stated that the basement is unfinished and there is no intent to create sleeping accommodations within the basement; and that there is no issue with run-off as the addition will be smaller than what existed.

Member Foreman asked about the lot coverage reduction.

Mr. Dalpe stated that the lot coverage by structures is being decreased through the proposed from 18.8% to 18.2% due to the footprint of the proposed being smaller than the screened porch that is being removed.

Chairman Haddad asked if the bulkhead was a means of egress and how many bedrooms exist.

Mr. Dalpe stated that the bulkhead is a means of egress from the basement and that there will be a total of three bedrooms on subject property.

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 Hurrie 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 16 Hudson Street in Falmouth contains 12,080 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3C. of the Code of Falmouth to remove the existing three-season room and construct, on a slightly smaller footprint in same location, a new bedroom and bathroom on subject property. The existing dwelling is a one-story, two bedroom dwelling with attached one-car garage and unfinished basement. The attached garage structure has a nonconforming setback to the southerly side yard property line of 5' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The applicant's proposed plan is to remove the existing three-season room and construct a bedroom and bathroom while decreasing the footprint of what was existing. The lot coverage by structures is existing at 18.8%, which will be decreased to 18.2% that is below the 20% maximum allowed in a residential district pursuant to Section 240-69 A. of the Code of Falmouth. The addition will increase the bedroom count to three bedrooms on subject property. The Board of Health submitted a referral noted herein that verifies the septic on said property is adequate for a three-bedroom dwelling.

Section 240-3 C. 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 removal of the existing three-season room and the proposed addition creating a third bedroom and bath for the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that there is no increase to the existing 5' nonconforming southerly side yard setback from the structure. Furthermore, the Board finds that the proposed bedroom and bathroom to be constructed will decrease the lot coverage by structures from 18.8% to 18.2% as the proposed addition will be slightly smaller than the existing footprint of the three-season room to be removed.

The Board finds through testimony of the applicant's representative that the basement is unfinished and

there is no intent to create sleeping accommodations within said space. The Board further finds through a referral submitted to the file that the Board of Health acknowledges the existing septic system being adequate for three bedrooms on subject property.

The Board finds that there will not be an increase in the stormwater runoff as the proposed addition is smaller in size with less roof area than what was existing [3 season room].

In addition to the above findings, the Board finds that the proposed removal of the three-season room and the construction of an addition for a bedroom and bath 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 and there will be no increase in the existing nonconforming southerly side yard setback; there are no new nonconforming setbacks; and the lot coverage by structures will be decreased from 18.8% to 18.2%, which is less than the 20% maximum allowed in a residential zoning district [Section 240-69 A. of the Code of Falmouth].
- 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 with the increase of one-bedroom on subject 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 will be at the rear of the existing dwelling and replace an existing three-season room; and there will be 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 [see referral submitted to file].
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system if necessary as there was no referral submitted from the Water Department.
- G. The proposed addition to the existing 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 Foreman 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 4 – 0 to Grant the Special Permit to Michael J. Marcone (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to remove existing three-season room and construct an addition in substantially the same footprint creating a bedroom and bathroom for the pre-existing nonconforming single-family dwelling on subject property known as 16 Hudson Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the bedroom/bathroom addition, all setbacks, lot coverage, height of addition and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "The Marcone Renovation 16 Hudson Street Falmouth, Massachusetts" architectural plans consisting of Drawings A1 through A3 and D1 dated September 15, 2014 as drawn by Progressive Designs and with a Board date 'received' stamp of November 24, 2014;
- Hand drawn existing floor plan, proposed floor plan and basement plan (3 pages) dated November 22, 2014 with a Board date 'received' stamp of November 24, 2014; and
- "Plot Plan of Land" prepared for 16 Hudson Street Falmouth, Massachusetts, dated September 18, 2014 drawn by Stephen J. Doyle [signature dated 10-16-14] and with a Board date 'received' stamp of November 24, 2014

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 space of subject dwelling.
- 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. The Applicant shall meet the requirements of the DPW Water Division.
- 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: 99-14

Applicant: MICHAEL J. MARCONE of Falmouth, MA

Subject Property: 16 Hudson Street, Falmouth, MA
Map 46, Section 00G, Parcel 000, Lot 013

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 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 #99-14 Marcone - 16 Hudson St / Addition posted 1/21/15 mm