

Zoning Board of Appeals Decisions Decisions for: 06-25-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 47-15

APPLICANT(S): MICHAEL S. WHITE of Falmouth, MA

OWNER: Kendall and Karin Bohr

DEED/CERTIFICATE: Book 22076 / Page 114

SUBJECT PROPERTY: 20 Redwing Terrace, North Falmouth, MA
Assessor's Map: Map 05, Section 09, Parcel 002, Lot 021

SUMMARY: Denied

PROCEDURAL HISTORY

1. Under a date of May 26, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 B. of the Code of Falmouth to convert an existing dwelling into two dwelling units on subject property known as 20 Redwing Terrace, North Falmouth, Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on June 25, 2015.
4. The public hearing was terminated on June 25, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Vice Chair Kimberly Bielán, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy voted on the matter. Minutes of the hearing are on file with the Board of Appeals.
5. The applicant was present at the hearing and reviewed the application and information submitted with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

6/25/2015 A letter from abutter Norm Kayserman of 18 Redwing Terrace stating opposition to the application (see file).

Letters/E-mails/Information from Applicant/Representative(s)

5/20/2015 Mr. White submitted a letter from Mr. Robert Paltz who has resided at 4 Redwing Terrace since 1991 and stated that the dwelling had four bedrooms and the downstairs was used for additional housing.

5/26/2015 Mr. White submitted a letter from B. Catherine O'Neill stating she was the owner of the property from 2002 to 2007 and that 3 bedrooms existed on main level and one bedroom was in the basement area that had living and kitchen facilities as well.

Letters/Referrals/E-mails from Town Departments

6/1/2015 Referral submitted by the Planning Department with no comment.

6/3/2015 Referral submitted by the Conservation Commission stating that subject property is not within their jurisdiction.

6/15/2015 Referral submitted by Board of Health Agent David Carignan stating: No negative comments at this time, but in the event a septic repair is required, certain modifications to the system may be necessary because it will no longer be a single-family dwelling.

6/9/2015 A letter submitted to the file by Lt. Mel Trott of Falmouth Fire Rescue Department stating they have no concerns with the proposed.

Plans submitted by Applicant/Applicant's Representative

Hearing:

Michael White was present and represented his application for conversion of the existing dwelling that he said currently has two units; one unit on the main level with three bedrooms and one unit in the basement with one bedroom. He stated the structure currently is a two unit structure and he is requesting it to become a legal conversion. He discussed the bylaw with the requirement of verification for the number of bedrooms as of January 1, 1980 and noted that the two letters that he submitted to the file do not confirm number of bedrooms as of January 1, 1980. He explained to the Board that the basement has been used for many years as a separate dwelling unit with its own access. He further explained that he researched Town Departments for any record for subject property including, building permits, assessing, special permits and septic permits. The only permit he found was a Title V inspection report for the installation of a four bedroom system in 1978. Mr. White stated that a neighbor confirmed to him her knowledge of the four bedrooms since construction of the dwelling, but that the neighbor did not want to become involved in the process. Mr. White explained that he would be living in the dwelling full-time and that he intends to rent out the existing basement unit.

The Board discussed the proposed application, floor plans and information submitted with the applicant. The dwelling was constructed in 1978, information submitted stating that there is and has been an accessory apartment in the lower level of subject structure. See file for the two letters submitted on Mr. White's behalf. The Board's concern was that the letters submitted to the file by the applicant did not verify how many bedrooms existed as of January 1, 1980, which is a criteria of Section 240-23 B. of the Code of Falmouth.

Chairman Foreman asked for any public comment in support or opposition of the proposed additions.

Mr. Norm Kayserman of 18 Redwing Terrace stated opposition to the proposed conversion and commented that the neighborhood is a single residential use and that the proposed use would be a detriment to the area and will impact the value of the surrounding homes. He stated his concerns that the property having a rental would add traffic and noise to the neighborhood.

After the Board discussed the plans and information with the applicant, Chairman Foreman suggested to the applicant that the hearing could be continued so that the applicant could submit more information regarding the bedroom count as of January 1, 1980.

The applicant [Mr. White] stated that he has talked with as many people as he can; the ones that know what was there when it was built won't put it in writing. He said every record he has reviewed as the property as a four bedroom; one had a narrative description with the apartment and four bedrooms. Mr. White stated he can't find any further information.

Member Bielan made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 - 0.

Chairman Foreman closed the hearing.

Board discussed application.

Member Murphy said the bylaw says no additional bedrooms as of 1980 and it's possible that there were two bedrooms in the basement that weren't visible if Assessors'/Inspectors did not enter the premises. He believes that the septic design plan and/or Title V inspection in 1978 was compelling information and

that he would be in favor of the application.

Member Van Keuren stated he believes the intentions of the applicant are sound and he would be in favor of the application.

Member Bielan said that there has been no evidence submitted to the file verifying existence of four bedrooms as of January 1, 1980; nothing in the record indicates that the bylaw [240-23 B. (c)] for a conversion of the dwelling has been satisfied.

Member Hurrie said he appreciates the applicant coming forward and he believes the applicant has exhausted all avenues to prove what existed in 1980 – and he would be in favor of the application.

Member Foreman said that you need to think beyond the individual in these cases. He said he agrees with Member Bielan, although he is sympathetic to the applicant, no evidence was submitted to substantiate that four bedrooms existed as of January 1, 1980.

Vote:

Member Van Keuren made a motion to approve the Special Permit discussed herein. Member Murphy seconded the motion.

Findings were stated as follows:

- The two units have existed in the dwelling for many years as evidenced by the letters and records submitted to the file.
- The proposed conversion meets the criteria set forth in Section 240-23 B. of the Code of Falmouth, except for the lack of evidence proving that four bedrooms existed within the structure as of January 1, 1980.
- The conversion will not have any harmful impacts to the neighborhood.
- That although not meeting the criteria for the number of bedrooms existing as of January 1, 1980, the fact that there was a septic plan for four bedrooms from 1978 is compelling to make approval.

Members vote: Members Hurrie, Van Keuren and Murphy voted in support of the motion. Members Bielan and Foreman voted in opposition.

Vote was 3 – 2, motion does not carry.

Second Vote:

Member Bielan voted to deny the Special Permit discussed herein. Member Foreman seconded the motion.

Findings were stated as follows:

- The application does not meet the criteria of Section 240-23 B. of the Code of Falmouth. Section 240-23 B. permits the conversion of a dwelling in existence on the lot as of January 1, 1980, into up to four dwelling units subject to certain criteria.
- Section 240-23 B. (3) of the Code of Falmouth provides that “[n]o additional bedrooms shall be allowed above the number in existence in the dwelling as of January 1, 1980. The application requested conversion of the existing dwelling into two (2) units with a total of four (4) bedrooms (3 bedrooms in main level unit and 1 bedroom in basement unit). There was not substantial and/or sufficient evidence submitted to the file to establish that there were four (4) bedrooms in existence within the dwelling as of January 1, 1980.
- An abutter gave testified that the conversion of the dwelling to two units was not in keeping with the neighborhood, including expressed concerns about impact upon traffic flow and noise.

Vote was 2 – 3, motion does not carry.

NOW THEREFORE

BE IT RESOLVED, that the application #47-15 for applicant Michael S. White is herein denied.

Special Permit Number: 47-15

Applicant: MICHAEL S. WHITE of Falmouth, MA

Subject Property: 20 Redwing Terrace, North Falmouth, MA
Map 05, Section 09, Parcel 002, Lot 021

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

Vote: Motions did not carry – Application denied.

Kenneth Foreman, 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 47-15 / White / Filed w/Town Clerk on 7/2/15