

Zoning Board of Appeals Decisions Decisions for: 08-13-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 58-15

APPLICANT(S): ELISABETH LEDWELL of Falmouth, MA

OWNER: Elisabeth Ledwell and Leo Patrick Ledwell, Jr.*

DEED/CERTIFICATE: Certificate 192335 – Plan 184410-0 (Sheet 2)

SUBJECT PROPERTY: 26 Amvets Avenue, Falmouth, MA
Assessor's Map: Map 38, Section 11, Parcel 000, Lot 074

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 25, 2015 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 remove existing deck and in its place construct a 12' x 20' sunroom addition to the pre-existing nonconforming single-family dwelling on subject property known as 26 Amvets Avenue, 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 August 13, 2015
4. The public hearing was terminated on August 13, 2015 wherein the Board consisting of Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate John Sutherland made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed proposed plans 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

None

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

None

Letters/Referrals/E-mails from Town Departments

6/29/2015 A referral was submitted by the Building Commissioner with no comment

7/1/2015 A referral was submitted by the Planning Department with no comment

7/24/2015 A referral was submitted by the Board of Health Agent David Carignan with the comment of:

The House is served by cesspools on the pond side of the structure and are likely very old and close to groundwater. The architects drawings of the sunroom show a woodstove in the room so I assume it will be insulated and habitable. If this room is provided a door, then it could be considered a bedroom and the cesspools would have to be evaluated for condition and capacity. No objections if the room has no door. The drawings do not show a door, but the opening is not labelled as a cased opening. We would prefer it to be a non-standard opening of 48" or more to preclude the installation of pre-hung door units.

Plans submitted by Applicant/Applicant's Representative

6/25/2015 "Plot Plan – Proposed Sun Room" prepared for Elisabeth Ledwell 26 Amvets Avenue Falmouth, Massachusetts as drawn by BSS Engineering, Inc., stamped and signed by Jeffrey Edwin Ryther, P.E., dated June 24, 2015 and with a Board date 'received' stamp of June 25, 2015

"Ledwell House – New Addition 26 Amvets Ave., Falmouth, MA" architectural drawings by Bruce A Peterson Architectural Design and consisting of Drawing Number 1 of 6 through 6 of 6 dated 6/21/2015 and with a Board date 'received' stamp of June 25, 2015

Hearing:

Elisabeth Ledwell, applicant and property owner, was present and reviewed the existing site conditions and the proposed addition of a sunroom where a deck is currently located at the northeast rear corner of dwelling. She explained the deck will be removed and the sunroom constructed in its place. The sunroom will have electricity and a wood stove. Ms. Ledwell explained that she has two existing bedrooms, but is assessed as a three bedroom house and that she believes she has a septic system that was installed previous to her purchasing property in 1995.

The Board discussed plans with Ms. Ledwell. The Board discussed the Board of Health referral and the possibility of removing the interior door and creating a cased opening so that the sunroom would not meet the criteria of a bedroom.

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

There was no public comment.

Member Sutherland made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Vice Chairman Foreman 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 26 Amvets Avenue in Falmouth contains 7,520 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to remove an existing deck at the rear of dwelling and construct a sunroom in its place. The existing dwelling has a nonconforming setback to the front property line off Amvets Avenue of 18.8' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage by structures is in compliance with Section 240-69 A. of the Code of Falmouth at 14.13%. Through the proposed plans the sunroom has a slightly smaller footprint than the existing deck and the set of stairs at the north side of the deck will be removed and the steps on the south side will be remain. The lot coverage by structures post construction will be reduced to 13.88% - still well below the maximum lot coverage by structures allowed by right under Section 240-69 A. of the Code of Falmouth. There are two bedrooms currently existing in the dwelling. It is noted that the total lot coverage of structures, parking and paving is not noted on the "Plot Plan" submitted to the file for the Board's review. The proposed sunroom will have a wood burning stove installed.

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 12' x 20' sunroom addition where there is currently a deck at the rear of the pre-existing nonconforming single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed addition does not increase the nonconforming front yard setback, nor does it create any new nonconforming setbacks on subject property. Furthermore, the Board finds that the existing lot coverage by structures on subject property of 14.13% will be reduced to 13.88%.

The Board finds that the proposed sunroom will have a wood stove and could be considered year round habitable space. The Board further finds through the referral submitted to the file by the Board of Health Agent that due to the proposed wood stove, the space meets the criteria of a bedroom and therefore increases bedroom count, unless the interior door is removed and a cased opening created to eliminate separate room and privacy. Furthermore, the Board finds that the applicant is desirous of maintaining the existing interior door and will meet with the Board of Health to determine what type of system existing on subject property [septic system or cesspools as plan submitted shows both components]. In the event the Board of Health makes a final determination that the existing system is for only two bedrooms and cannot accommodate a third possible bedroom, then the Board requires that the applicant will file a deed restriction limiting subject property to two bedrooms.

In addition to the above findings, the Board finds that the proposed sunroom 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 sunroom as there is no increase in existing nonconforming setback and there is no new nonconformity being created 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 relative to the creation of the sunroom as the intent of the applicant is to utilize the space as a sunroom with no intention of utilizing it as a bedroom; 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 sunroom will be construction at the rear corner of the dwelling where a deck currently exists; and there is no impact on any view or vista from the roadway or abutting properties.
- E. A sewage disposal system is in place and the applicant will work with the Board of Health to determine the system existing and its bedroom capacity for subject property.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed sunroom 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Murphy 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 Elisabeth Ledwell (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to remove existing deck and construct a 12' x 20' sunroom addition on the pre-existing nonconforming single-family dwelling on subject property known as 26 Amvets Avenue, Falmouth, MA. This special permit is subject to the following conditions:

1. The removal of the existing deck and construction of the sunroom, all setbacks, height of sunroom, lot coverage and use of sunroom shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Sun Room" prepared for Elisabeth Ledwell 26 Amvets Avenue Falmouth, Massachusetts as drawn by BSS Engineering, Inc., stamped and signed by Jeffrey Edwin Ryther, P.E.,

dated June 24, 2015 and with a Board date 'received' stamp of June 25, 2015

- "Ledwell House - New Addition 26 Amvets Ave., Falmouth, MA" architectural drawings by Bruce A Peterson Architectural Design and consisting of Drawing Number 1 of 6 through 6 of 6 dated 6/21/2015 and with a Board date 'received' stamp of June 25, 2015

2. This Special Permit approval is contingent upon the applicant meeting with the Board of Health Agent, David Carignan, to determine the type of existing septic system on subject property as well as its bedroom capacity. If the Health agent determines that the system allows a third bedroom then the plans drawn by Bruce A Peterson Architectural Design may be constructed. In the event that the Board of Health Agent determines that the existing septic system capacity is only for two bedrooms, then the applicant shall submit a draft copy of a Deed Restriction that limits the subject property to two bedrooms. A copy of the draft document will be submitted to the Board of Appeals for approval. When approved the Zoning Administrator will forward to the Town Manager for signature and the applicant will then file the Deed Restriction with the Registry of Deeds and submit a filed copy to the Board of Appeals forthwith.

3. 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.

4. 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.)

5. 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: 58-15

Applicant: ELISABETH LEDWELL of Falmouth, MA

Subject Property: 26 Amvets Avenue, Falmouth, MA
Map 38, Section 11, Parcel 000, Lot 074

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.

Terrence J. Hurrie, 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:

58-15 SP / Ledwell / Filed w/Town Clerk 8/19/15