

Zoning Board of Appeals Decisions Decisions for: 08-20-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 61-15

APPLICANT(S)/OWNER: KAREN A. ROBERTS & JANET L. WALSH of Falmouth, MA

DEED/CERTIFICATE: Certificate 204718 – Lot 70, Plan 18441-0 (Sheet 2)

SUBJECT PROPERTY: 34 Amvets Avenue, Falmouth, Massachusetts
Assessor's Map: Map 38, Section 11, Parcel 000, Lot 070

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of July 7, 2015, 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 convert the dormer, creating living space on the second floor of the pre-existing nonconforming single-family dwelling located at 34 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 20, 2015.
4. The public hearing was terminated on August 20, 2015, wherein the Board consisting of Chairman Kimberly Bielan, 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 represented at the hearing by Jean Bowden of Capizzi Home Improvement, Inc., who 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

8/20/2015 Applicant submitted 7 letters in support of the proposed project from abutters: Laura and Scott Goddard of 20 Amvets Avenue, John Kevin Kay of 22 Amvets Avenue, Ralf Schiffman of 27 Amvets Avenue, Elaine Russ of 28 Amvets Avenue, Wanda Maloney of 29 Amvets Avenue, Maureen Morse of 30 Amvets Avenue and resident of 36 Amvets Avenue.

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

None

Letters/Referrals/E-mails from Town Departments

7/10/2015 Referral submitted by the Planning Department with no comment.

7/16/2015 Referral submitted by the Building Commissioner with no comment.

8/10/2015 Referral submitted by the Board of Health Agent, David Carignan with comment of: The proposed alterations to the dwelling do not appear to increase the total number of bedrooms above the three that exist now. The septic system depicted on the site plan is adequate for three bedrooms. See attached decision of the Board of Health. Mr. Carignan attached a Variance under Title 5 allowing an upgrade to the septic system and limiting the bedroom count to three - #2 under conditions on second page.

Plans submitted by Applicant/Applicant's Representative

7/6/2015 "Second Floor Addition First Floor Remodel" prepared for Karen Roberts and Janet Walsh 34 Amvets Avenue Falmouth, Massachusetts, drawn by Capizzi Home Improvement consisting of Drawing 1 'Proposed Elevations' dated 2/16/2015 with a final revised date of 7/6/2015, Drawing 2 'Existing Elevations' dated 2/16/2015 with a final revised date of 7/6/2015, Drawing 7 'Existing Conditions Plan View' dated 3/24/2015 with a revised date of 3/26/2015, Drawing 1A 'First Floor Plan' (proposed) dated 2/16/2015 with final revision date of 3/26/2015, Drawing 2A 'Second Floor Plan' (proposed) dated 2/16/2015 with final revised date of 3/26/2015 - all plans have a Board date 'received' stamp of July 6, 2015

7/8/2015 "Proposed Septic System Upgrade" prepared for Capewide Enterprises located at 34 Amvets Avenue Falmouth, MA prepared by JC Engineering, Inc. in East Wareham - dated August 4, 2014 with a final revised date of 6/29/2015 signed and stamped by John L. Churchill, Jr., P.L. S. and with a Board date 'received' stamp of July 8, 2015

Hearing:

Jean Bowden with Capizzi Home Improvement, Inc. was present on behalf of the applicant(s) who were also present, and reviewed the existing site conditions and the proposed addition to the second floor, eliminating the dormer and raising the roof line to create new living space that will become a bedroom relocated from the first floor, that will undergo renovation. The dwelling is a 1.5 story structure. The second floor existing is an attic area with a scuttle and ladder for access. The space that will be vacated shown as 'Bedroom 3' on the first floor plan will be used to create a stairway to second floor and increase kitchen and dining area - opening it up to living area. The dwelling will remain a three-bedroom dwelling. The roof line will be raised approximately four (4) feet with the new height of the dwelling not to exceed 24'. The existing chimney will be removed and it was noted that the heat existing is oil and it will be converted to gas.

The Board discussed plans with Ms. Bowden. All concerns and questions were addressed.

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

There was no public comment.

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

Chairman Bielan 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 34 Amvets Avenue in Falmouth contains 7,848 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition to the second floor that eliminates the existing dormer and increased the height of the structure to allow additional space on the second floor to create a bedroom and bathroom. A bedroom from the first floor will be relocated to the second floor, allowing the first floor to be renovated and create a stairway to the second floor and increase the kitchen and dining room areas on first floor. The existing dwelling structure has a nonconforming setback from the front of the dwelling to the front property line off Amvets Avenue of 23.3' that require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69

A. of the Code of Falmouth. The existing dwelling has three bedrooms and will remain a three bedroom dwelling through this special permit.

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 second floor of the dwelling and removal of the dormer and raising the height of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that there is no increase in the nonconforming front yard setback, there are no new nonconforming setbacks and the lot coverage by structures will not be increased through this special permit. Furthermore, the Board finds that the proposed plans for the dwelling will increase living space to better utilize the dwelling by its residents.

The Board finds that the Board of Health submitted a copy of Title 5 Variance that states under Condition 2 of the second page that the dwelling will be limited to a three bedroom dwelling. The Board further finds through testimony and plans submitted that the subject dwelling will have no more than three bedrooms.

The Board finds through testimony and letter submitted by Capizzi Home Improvement, Inc., that the height of the dwelling structure will be increased approximately four feet and will not exceed a 24' height and therefore will not create any impact on abutting lots. The Board further finds through testimony and letter submitted from Capizzi Home Improvement, Inc. that the height of the dwelling will be no more than 24' in height, which is under the maximum height of 35' allowed by right pursuant to Section 240-70 of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed change to the single-family dwelling discussed herein 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 additional space to the second floor as the footprint will not be increased, the nonconforming setback will not be increase and no new nonconforming setbacks will be created.
- B. The site is suitable for the proposed use as the property is zoned residential and has been a single-family dwelling use.
- 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 slightly changed but 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 signed off as a three bedroom system by the Board of Health as shown on the information submitted to the file by the Board of Health.
- 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.
- G. The proposed change 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Hurrie seconded the motion. Motion carried 5 – 0.

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 Karen A. Roberts and Janet L. Walsh (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to convert the dormer and increase the living space on the second level of the pre-existing nonconforming single-family dwelling on subject property known as 34 Amvets Avenue, Falmouth,

Massachusetts. This special permit is subject to the following conditions:

1. The proposed second floor of the pre-existing nonconforming single-family dwelling, all setbacks, height of dwelling, lot coverage and use of said dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Second Floor Addition First Floor Remodel" prepared for Karen Roberts and Janet Walsh 34 Amvets Avenue Falmouth, Massachusetts, drawn by Capizzi Home Improvement consisting of Drawing 1 'Proposed Elevations' dated 2/16/2015 with a final revised date of 7/6/2015, Drawing 2 'Existing Elevations' dated 2/16/2015 with a final revised date of 7/6/2015, Drawing 7 'Existing Conditions Plan View' dated 3/24/2015 with a revised date of 3/26/2015, Drawing 1A 'First Floor Plan' (proposed) dated 2/16/2015 with final revision date of 3/26/2015, Drawing 2A 'Second Floor Plan' (proposed) dated 2/16/2015 with final revised date of 3/26/2015 – all plans have a Board date 'received' stamp of July 6, 2015; and

- "Proposed Septic System Upgrade" prepared for Capewide Enterprises located at 34 Amvets Avenue Falmouth, MA prepared by JC Engineering, Inc. in East Wareham – dated August 4, 2014 with a final revised date of 6/29/2015 signed and stamped by John L. Churchill, Jr., P.L. S. and with a Board date 'received' stamp of July 8, 2015.

2. There shall be no more than three (3) bedrooms allowed on subject property.

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. The Applicant shall meet the requirements of the DPW Water Division.

5. 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.)

6. 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: 61-15

Applicant: KAREN A. ROBERTS and JANET L. WALSH of Falmouth, MA

Subject Property: 34 Amvets Avenue, Falmouth, Massachusetts
Map 38, Section 11, Parcel 000, Lot 070

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:

SP 61-15 Roberts / Walsh - Filed w/ Town Clerk 8/24/15