

Zoning Board of Appeals Decisions Decisions for: 02-05-2015

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FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION

APPLICATION NO: 2-15

APPLICANT/OWNER: MARC W. PERREAULT and EVENLYN M. PERREAULT
of Belchertown, MA

DEED/CERTIFICATE: Book 11112 / Page 088

SUBJECT PROPERTY: 57 Madeline Road, East Falmouth, Massachusetts
Assessor's Map: Map 32, Section 06, Parcel 000, Lot 116

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 6, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition to increase living area within the pre-existing nonconforming single-family dwelling located at and known as 57 Madeline Road in East 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 February 5, 2015.
4. The public hearing was terminated on February 5, 2015 wherein the Board consisting of Vice Chairman Kimberly Bielan, Clerk Terrence Hurrie, Associate Mark Cool and Associate John Sutherland made a decision to Grant the Special Permit with conditions.
5. The applicant was represented at the hearing by Mark Bagosian, Contractor, who reviewed and discussed proposed plans with the Board.
6. The Board received documents and exhibits prior to and during the public hearing which 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 submitted

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

2/4/2015 Applicant's representative submitted several Field Cards of neighborhood properties and lot coverage calculations in relation to neighborhood

Letters/Referrals/E-mails from Town Departments

1/7/2015 Referral from the Planning Department stating no comment.

1/15/2015 Referral from the Building Commissioner stating no comment.

1/22/2015 E-mail from Board of Appeals staff to applicant's representative requesting additional information.

2/2/2015 Referral submitted from the Board of Health Agent stating no objections as long as dwelling remained two bedrooms.

2/3/2015 E-mail from Board of Appeals staff to applicant's representative requesting information not received to date.

2/4/2015 Copy of Orders of Conditions from Conservation Commission.

2/5/2015 Board of Appeals staff submitted photos of dwellings in neighborhood of subject property showing height and bulk.

Plans submitted from Applicant

"Site Plan" for 57 Madeline Road, Falmouth, Mass. Dated 6/18/1991 with a final revision date of 9/9/14 as drawn by Warwick & Associates, Inc. – signed by Gary S. Labrie, PLS with a Board date 'received' stamp of January 6, 2015.

Architectural Plans drawn by Residential Plans for Marc & Evelyn Perreault were submitted and consisted of:

- A. 'Existing First Floor Plan' dated 4/2/14 with a Board date 'received' stamp of Jan 6, 2015;
- B. 'New First Floor Plan' dated 4/2/2014 with a Board date 'received' stamp of January 6, 2015;
- C. 'new Second Floor' dated 4/2/14 with a final revision date of 10/14/14 - with a Board date 'received' stamp of January 6, 2015;
- D. 'Front Elevation' dated 6/1/14 with a final revision date of 10/14/14 and with a Board date 'received' stamp of January 6, 2015;
- E. 'Side Elevation' dated 6/11/14 with a final revision date of 10/14/14 and with a Board date 'received' stamp of February 4, 2015;
- G. 'Foundation' dated 4/2/14 with a final revision of 10/14/14 and with a Board date 'received' stamp of January 6, 2015;
- H. 'First Floor Framing' dated 4/2/14 with a final revision date of 10/14/14 and with a Board date 'received' stamp of January 6, 2015
- I. 'Roof Detail' dated 4/2/14 with a final revised date of 10/14/14 and a Board date 'received' stamp of January 6, 2015; and
- J. 'Side Section' dated 4/2/14 with a final revision date of 6/1/14 and with a Board date 'received' stamp of January 6, 2015.

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 57 Madeline Road in East Falmouth contains 8,418 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct an addition at ground level and a second story addition to the pre-existing nonconforming single-family dwelling on subject property. The dwelling structure has a nonconforming setback of 16.69' to the 3' contour line off the waters of Eel Pond that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The lot coverage by structures exists at 17.6% and is in compliance with Section 240-69 A. of the Code of Falmouth. The applicant applied under Section 240-69 E. of the Code of Falmouth to increase the lot coverage exceeding the 20% maximum allowed by right. The proposed 12' x 26' addition to the first level to increase the living space, being constructed over where a concrete patio exists and the addition of a covered porch at the front of the dwelling will increase the lot coverage by structures from 17.6% to 21.6%.

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 additions to the pre-existing nonconforming dwelling are not

substantially more detrimental than what currently exists. The Board further finds that the proposed additions will enhance the utilization of the dwelling for year round living for its residents. Furthermore, the additions do not increase the nonconforming setback at the rear of the property, nor will any new nonconforming setback be created.

Section 240-69 of the Code of Falmouth "Maximum lot coverage." – sub-section E. allows the Board of Appeals to approve an increase in lot coverage by structures up to 25% after consideration is made based on the size and height of the structure in relation to the average size and height of structures in the neighborhood, the effects of any shadowing on adjacent properties, any impact on a view or vista from a public way or any effect of nitrogen on a coastal embayment.

The Board finds that the proposed additions to the pre-existing nonconforming single-family dwelling on subject property is in keeping with the size and height of neighboring homes; that there is no shadow effect on any abutting property from proposed addition; that the proposed additions do not impact a view or vista from the public way; and there is no effect on any coastal embayment from the proposed additions.

The Board finds through testimony by the applicant's representative that the second floor addition will be storage space only which is necessary for the year round use by the residents as the basement is crawl space with dirt floor. The Board further finds through testimony by the applicant's representative that the second floor will not be heated or finished and will remain storage space. Furthermore, testimony was given by the applicant's representative that there is no intent whatsoever to create a bedroom or sleeping accommodations within any of the second floor area.

The Board finds through submission of a referral from the Board of Health Agent that the dwelling is limited to two bedrooms. The Board further finds that the plans submitted and reviewed by the Board show that the dwelling discussed herein will remain a two-bedroom dwelling.

The Board finds through testimony by the applicant's representative that the existing shed in the northwest corner of the lot will remain and that there is no intent to add any more accessory structures to subject property. The Board further finds through testimony of the applicant's representative that the "Site Plan" needs to be revised showing the accurate size of the proposed front porch [9' x 2' as shown on architectural plans] and updated lot coverage based on said change.

In addition to the above findings, the Board finds that the proposed additions to the single-family dwelling represented 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 additions as there is no increase in existing nonconforming setback to the 3' contour line and there will be no new nonconforming setbacks created. The lot coverage by structures will be increased beyond the 20% maximum allowed by right with the Board's approval after consideration that there is no adverse impact to the neighborhood from the additions.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a two-bedroom dwelling for many years.
- 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 improved and there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that are similar in size and height; 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 two bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed additions to the single-family 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 Cool 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 4 – 0 to Grant the Special Permit to Marc W. and Evelyn M. Perreault (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a ground level and second floor addition to the pre-existing nonconforming two-bedroom single-family dwelling located at 57 Madeline Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The additions, floor plans, setbacks, height of dwelling structure, lot coverage and use of structure (specifically second floor) shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan" for 57 Madeline Road, Falmouth, Mass drawn by Warwick & Associates, Inc. dated 6/18/1991 with a final revision date of 9/9/2014 – signed by Gary S. Labrie, PLS and with a Board date 'received' stamp of January 6, 2015; and

- Architectural Plans drawn by Residential Plans for Marc & Evelyn Perreault were submitted and consist of:

- A. 'Existing First Floor Plan' dated 4/2/14 with a Board date 'received' stamp of Jan 6, 2015;
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- I. 'Roof Detail' dated 4/2/14 with a final revised date of 10/14/14 and a Board date 'received' stamp of January 6, 2015; and
- J. 'Side Section' dated 4/2/14 with a final revision date of 6/1/14 and with a Board date 'received' stamp of January 6, 2015.

2. The existing 8.2' x 10.2' shed in the northwest corner of subject property shall be the only accessory structure allowed on subject property without further review by the Board of Appeals.

3. The second floor of subject dwelling shall be used for storage only as represented at the hearing and shall have no heat and remain unfinished space.

4. There shall be no more than two (2) bedrooms allowed on subject property.

5. The applicant shall submit a revised "Site Plan" showing the correct covered front porch [9' x 2' – see architectural plan noted in Condition 1 above] and recalculated lot coverage by structures through said revision. The revised "Site Plan" shall be submitted to the Board of Appeals prior to the issuance of a building permit.

6. 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.

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

8. 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.)

9. 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: 2-15

Applicant: MARC W. PERREAULT and EVELYN M. PERREAULT

Subject Property: 57 Madeline Road, East Falmouth, Massachusetts
Map 32, Section 06, Parcel 000, Lot 116

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, Vice Chairman, 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:

#2-15 Perreault SP - 57 Madeline Road