

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 93-14

APPLICANT: DAVID A. FLANAGAN, TRUSTEE of Walpole, MA

OWNER: 65 Linden Road Nominee Realty Trust

DEED/CERTIFICATE: Certificate 199883 – Lot 13, Plan 15579-B

SUBJECT PROPERTY: 65 Linden Road, Falmouth, MA 02540  
Map 47A, Section 15, Parcel 029, Lot 013

Under a date of November 7, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a master bedroom addition to the pre-existing nonconforming single-family dwelling on subject property known as 65 Linden Road, Falmouth, Massachusetts.

A public hearing was held 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.

Keith E. Fernandes with J.M. O'Reilly & Associates, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition to create a master bedroom. He explained that the dwelling structure has a nonconforming easterly side yard setback to the property line of 9.6' that requires a 10' setback; and that the lot coverage by structures is nonconforming at 21.8% and will be increased to 24.9% through the proposed addition. The proposed bedroom addition will be attached at the northeast rear portion of the dwelling [and attached garage]. The dwelling is one-story with three bedrooms existing and the proposed addition will increase the total bedrooms to four. The basement has a 'bonus' room and 'sitting' room, and a portion of the basement is unfinished. Mr. Fernandes explained that the applicant does not want to create a second story for the bedroom addition for aesthetics and structural reasons and is therefore requesting the Board to approve the increase of lot coverage by structures to 24.9%.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Conservation Commission stated: Keep stormwater on property.

A referral submitted by the Engineering Department has standards comments regarding any change in utilities requiring a permit from appropriate department and that the project must not direct any stormwater runoff onto public property, abutters or right of ways. The referral further commented: Please note that we reviewed the Linden Road taking and determined that the entire length was accepted, including the stub off the cul-de-sac that #65 is along; this portion is not private as shown on the maps.

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

Clerk Bielan read an e-mail from the Board of Health Agent to the Zoning Administrator noting that the property has a suitable soil absorption system for a four bedroom single-family dwelling and that two issues need to be resolved before project goes forward: 1) abandon existing cesspool and install a standard 1500 gallon septic tank; and 2) a reserve area would have to be indicated on a plot plan for future reference.

Member Foreman asked about lot coverage calculations for the surrounding area.

Mr. Fernandes reviewed properties in vicinity and stated that "Shoreway Acres" [hotel] is abutter to the rear.

Member Foreman asked if any sheds are proposed and if patio is in the lot coverage calculations.

Mr. Fernandes stated that there is no intent to have any sheds and that the patio area is calculated in the 'total' lot coverage as it is not a structure.

Member Cool asked if there is any sleeping accommodations proposed for basement area and if there is a plan for stormwater.

Mr. Fernandes stated there is no intent for sleeping accommodations within the basement area and that stormwater runoff will be addressed through existing drywells.

Chairman Haddad asked what is currently in the basement and what foundation is proposed for addition.

Mr. Fernandes stated that a portion of the basement is finished as bonus room/recreation room and there is also storage. He said the addition will have a slab finish – no basement.

Member Bielan asked if there is any plan to add shed or other accessory structure.

Mr. Fernandes stated he isn't aware of any plan.

Member Bielan asked if any consideration was made to construct a second story instead of increasing the footprint of the dwelling.

Mr. Fernandes said he is unsure how the client would feel about a second story and stated that the structural integrity of the dwelling may not support a second story – more cost effective to construct an addition as proposed.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Richard Mahoney of 21 Linden Street stated he is in favor of the project, that the owners are good caretakers of their property. He further stated that he would be opposed to a second story addition as it would not be aesthetically appealing.

Member Foreman made a motion to close the hearing. Member Bielan seconded the motion. Motion carried 5 – 0.

Chairman Haddad closed the Hearing.

Board Discussion:

Member Foreman said the sideline is nonconforming and could be improved – existing at 9.6' with proposed at 9.8'; and there are no objections from abutters – with one in favor. He further stated that the proposed appears to be in keeping with the neighborhood.

Member Bielan stated that testimony was given that a single story ranch is in keeping with the neighborhood and this addition is not adding any bulk and will not be seen from roadway. She stated she would be weary of additional bulk in the future [height increase].

Members Cool and Hurrie agreed with the comments.

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 65 Linden Road in Falmouth contains 11,882 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 add onto the pre-existing nonconforming dwelling due to nonconforming setbacks and lot coverage by structures exceeding 20%; and also under Section 240-69 E. of the Code of Falmouth to allow the lot coverage by structures to be increased to 24.9%. The existing nonconforming easterly side yard setback of 9.6' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The subject property has two front yards – one being off Linden Road that has driveway access to property and a front yard off from Curtis Street at the west side of property. The setback for a front yard off a roadway is 25' pursuant to Section 240-68 A. of the Code of Falmouth. The existing setback off Linden Road is in compliance with a 29'3" setback; the setback from the property line off Curtis Street from dwelling structure is 13'9" which is nonconforming. Section 240-13 "Definitions" of the Code of Falmouth – 'Yard, Front' states: Note: A lot may have more than one front yard. Therefore, primary front yards may be designated by the Building Commissioner for the purpose of maintaining a front yard setback. A front yard not designated as a primary front yard may maintain a side or rear yard setback. There was no determination of the plan by the Building Commissioner regarding primary front yard.

The applicant is proposing to construct an 18' x 28' addition to the northeasterly [rear] portion of the existing dwelling. The addition is to create a new master bedroom and bathroom. The existing single-story dwelling has a one-car attached garage, a basement and three bedrooms. The proposed addition will add a fourth bedroom to said dwelling.

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 pre-existing nonconforming dwelling to create a master bedroom with bath is not substantially more detrimental than what currently exists as the addition will be at the rear of the dwelling and not visible from the roadway. The Board further finds that the proposed addition will not increase the existing nonconforming side yard setback and it will not create any new nonconforming setbacks. Furthermore, the Board finds that the proposed is not extending the existing nonconformity as the proposed will be 9'8" from the side property line as opposed to the existing 9'6" setback.

The Board finds that the addition will be an enhancement for family utilization of subject dwelling. The Board further finds through testimony of the applicant's representative that there is no intent to add any accessory structures to subject property. Furthermore, the Board finds that testimony from an abutter prefers the mass versus increase in height of the dwelling [mass vs. bulk].

Section 240-69 E. of the Code of Falmouth – "Maximum lot coverage" allows the Board to approve lot coverage by structures to exceed the 20% maximum under Section 240-69 A. of the Code of Falmouth, after consideration of the size and height of a structure in relation to the average size and height of structures in the neighborhood, any effects of shadowing on adjacent properties, any impact on views and vistas from public ways or any effect of nitrogen on coastal embayments.

The Board finds that the applicant applied under Section 240-69 E. of the Code of Falmouth and that the subject property is currently nonconforming with a 21.8% lot coverage by structures – exceeding the 20% maximum allowed in this residential district. The Board further finds that the proposed increase of lot coverage by structures from 21.8% to 24.9% does not have any effect on surrounding properties, it will not impact any view or vistas from a public way and it will not have any effect on a coastal embayment. Furthermore, the Board finds that the proposed addition that will increase the lot coverage by structures to 24.9% will not be seen from the roadway as it will be constructed at the rear of the existing dwelling.

The Board finds that there are existing drywells on subject property to contain stormwater runoff on site.

The Board finds that there is an existing basement that has a bonus/recreation room and storage area. The Board further finds through testimony of the applicant's representative that there is no sleeping in the basement area and there is no intent to create any sleeping accommodations in the basement area of subject dwelling.

In addition to the above findings, the Board finds that the proposed addition to create a master bedroom/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 for a master bedroom/bath as there is no increase of the existing nonconforming side yard setback; no new nonconforming setbacks created; and the increase in lot coverage to 24.9% was approved herein under Section 240-69 E. 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 as the addition of the master bedroom/bath will be a minor increase in the number of bedrooms [from 3 to 4 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 unchanged as the addition will be constructed to the rear of the dwelling and not visible from any roadway and no impact to the character of the neighborhood.
- E. The sewage disposal system is in place and signed off as a four bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant should contact the Town Water Department regarding updating of water system as the Board did not receive a referral from the Water Department for proposed addition.
- G. The proposed addition to the dwelling as 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 Foreman made a motion to Grant the Special Permit with conditions. Member Cool 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 David A. Flanagan (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a master bedroom addition to the pre-existing nonconforming single-family dwelling located and known as 65 Linden Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location and construction of the master bedroom/bath addition, all setbacks, building height, lot coverage and use of said addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Proposed Site Plan 65 Linden Road, Falmouth, MA" dated 11/6/2014 drawn by J.M. O'Reilly & Associates, Inc. with a Board date 'received' stamp of November 7, 2014; and
  - "Flanagan Residence 65 Linden Road Falmouth, MA" architectural plans drawn by Golemme Mitchell Architects, LLC consisting of Drawing A1 'Elevation' dated 11/12/2014, Drawing A2 'Elevation' dated 11/12/2014, Drawing A3 'Floor and Demo Plan' dated 11/12/2014, Drawing A4 'Foundation and Floor Framing' dated 11/12/2014 and Drawing A5 'Ceiling and Roof Framing Plans' dated 11/12/2014 – all Drawings have a Board date 'received' stamp of November 14, 2014.
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be accessory structures allowed on subject property without further review by the Board of Appeals [lot coverage at 24.9% through this special permit].
4. There shall be no sleeping accommodations or bedrooms created within the basement area of subject dwelling.
5. The applicant will submitted an 'as-built' plan post construction verifying the lot coverage did not exceed 24.9% and that the easterly side yard setback for addition proposed and approved herein does not exceed 9'8".

- 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: 93-14

Applicant: DAVID A. FLANAGAN, TRUSTEE of Walpole, MA

Subject Property: 65 Linden Road, Falmouth, Massachusetts  
Map 47A, Section 15, Parcel 029, 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: 5 – 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 #93-14 Flanagan - 65 Linden Rd / Bedroom addition posted 1/21/15 mm