

Zoning Board of Appeals Decisions Decisions for: 09-24-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 78-15

APPLICANT(S)/OWNER: CALVIN G. BOWEN of Teaticket, MA

DEED/CERTIFICATE: Certificate 192093 – Lots 70 & 71, Plan 4286-A, Plate 6

SUBJECT PROPERTY: 12 Harrington Street, Teaticket, Massachusetts
Assessor's Map: Map 39A, Section 30, Parcel 000, Lot 070

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of August 20, 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 add a dormer, creating living space and a bathroom on the 2nd floor of the pre-existing nonconforming single-family dwelling on subject property known as 12 Harrington Street, Teaticket, MA.
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 September 24, 2015.
4. The public hearing was terminated on September 24, 2015, wherein the Board consisting of Clerk Terrence Hurrie as Acting Chairman, Member Ed Van Keuren, Member Paul Murphy – Acting Clerk 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 Steve Bilodeau 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

None

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

None

Letters/Referrals/E-mails from Town Departments

8/21/2015 Referral submitted by the Town Planner, Brian Currie, with no comment.

8/24/2015 Referral submitted by Building Commissioner, Eladio Gore, with no comment.

8/21/2015 Referral submitted to the file by the Board of Health Agent, David Carignan, states: Please see attached Board of Health Variance Request Decision from a hearing for this property conducted April 12, 2010, a the property owner's request. The Decision, specifically Condition #2, limits the dwelling/property

to two bedrooms. When the sewer is extended to the property, the DPW regulations controlling bedroom additions will be applied and the Board or Health Decision and conditions will become moot.

Plans submitted by Applicant/Applicant's Representative

8/20/2015 - "Plot Plan – Existing House Prepared for Calvin Bowin 12 Harrington Street Falmouth, Massachusetts" drawn by BSS Design, Inc. dated July 16, 2015 and with a Board date 'received' stamp of August 20, 2015;

- "Basement Plan (Existing & Proposed)" – hand drawn for 12 Harrington Street and with a Board date 'received' stamp of August 20, 2015; and

- "Calvin Bowen Residence 12 Harrington Street East Falmouth" consisting of eleven (11) pages of plans (hand drawn) showing Elevations, Existing and Proposed Floor Plans, Basement Floor, Cross Section and Framing Plan – all not dated, not authored – all with a Board date 'received' stamp of August 20, 2015.
Hearing:

Steve Bilodeau, Contractor, was present on behalf of the applicant, who was also present, and reviewed the existing site conditions and the proposed plan to add a dormer. He explained that there is no change to the footprint of the dwelling structure; the only change is to construct a dormer at the rear second floor to increase head room to create a bathroom and two bedrooms in an existing unfinished second floor of the dwelling. He stated that he now understands that only one bedroom can be created, not two, and only after the property is hooked to the Town sewer, so the other side of the second floor will be open loft area. Mr. Bilodeau stated that the existing height of the dwelling is 19.6', which will not change or be increased. He stated that the shed located in the rear of the property is within the lot coverage calculation and will remain on site.

The Board discussed plans with Mr. Bilodeau. The Board discussed the issue of the dwelling being restricted to two bedrooms currently and that only a third bedroom may be created once the property is hooked to Town sewer in the future. The Board asked if the applicant understood that the dormer and the bathroom may be constructed with the Board's approval, but that a third bedroom cannot be created until the property is hooked to Town sewer. Mr. Bilodeau stated that they understand.

Chair Hurrie 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 4 - 0.

Chair Hurrie 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 12 Harrington Street in Teaticket contains 4,800 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a dormer, add a bathroom and create living space on second floor that is currently unfinished. The existing single-family dwelling on subject property is nonconforming due to a setback from the structure to the front yard property line of 20.2' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The request to construct an addition of a dormer to the second floor at the rear façade of the dwelling. A bathroom will be created and the upstairs finished to be able to create one additional bedroom when the dwelling is connected to the Town sewer in the future. The dwelling is currently deed restricted as a two-bedroom (2 bedroom) dwelling through a Board of Health variance, which will be voided when the property is connected to the sewer. The plans submitted to the file show two bedrooms proposed on the second level of the dwelling with two bedrooms remaining on the first floor. This floor plan is not approved herein and the applicant shall be submitting a revised second floor plan prior to building permit being issued.

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 dormer addition and creation of a bathroom and habitable space to the currently unfinished second floor of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed finishing of the second floor will enhance the utilization of the current two-bedroom dwelling structure. Furthermore, the Board finds that the applicant understands that the dormer may be constructed, the bathroom may be created and walls in the second floor may be finished, but that there will be no creation of a third bedroom until such time that the property is connected to the Town sewer.

The Board finds that the proposed dormer addition to the second floor of the dwelling will not increase the footprint of the dwelling therefore there will be no increase to the lot coverage by structures and the existing nonconforming setback will remain as it exists on plan submitted and noted herein. The Board further finds that no new nonconforming setbacks will be created through the proposed plan discussed herein. Furthermore, the Board finds that there will be no change in the height of the dwelling as it exists through the proposed dormer addition.

The Board finds through testimony by the applicant's representative [Mr. Bilodeau] that the shed currently existing in the rear of the property is within the lot coverage calculations on the plan and that the shed will be remaining on subject property.

In addition to the above findings, the Board finds that the proposed dormer addition and finishing of the second floor 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 dormer addition as there is no change in the footprint of the dwelling and no increase in any nonconformity existing or lot coverage.
- 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 there is no change in the location of the existing driveway on site and the addition of only one bedroom, making this a three bedroom dwelling – only after the property is hooked to the Town sewer – is in keeping with the neighborhood and will be a minimal change to the property's use.
- D. The visual character of the subject property will be unchanged as the dormer addition is at the rear of the property and not visible from the roadway; and there is no impact on any view or vista from the abutting properties.
- E. The sewage disposal system is in place and signed off as a two bedroom system by the Board of Health and can only be increased to a three bedroom dwelling once the property is connected to the Town sewer in the future.
- 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 as the Water Department did not submit a referral for the Board's review.
- G. The proposed dormer addition 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 Sutherland made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Calvin G. Bowen (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a dormer addition, create living space and a bathroom on the unfinished second floor of the pre-existing nonconforming single-family dwelling on subject property known as 12 Harrington Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the dormer, creation of a bathroom and living space on the second floor of the dwelling shall be as represented to the Board, discussed herein and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Existing House Prepared for Calvin Bowin 12 Harrington Street Falmouth, Massachusetts" drawn by BSS Design, Inc. dated July 16, 2015 and with a Board date 'received' stamp of August 20, 2015;
- "Basement Plan (Existing & Proposed)" – hand drawn for 12 Harrington Street and with a Board date 'received' stamp of August 20, 2015; and
- WITH the exception of the creation of two bedrooms as shown on the second floor plan included with the drawings submitted as: "Calvin Bowen Residence 12 Harrington Street East Falmouth" consisting of eleven (11) pages of plans (hand drawn) showing Elevations, Existing and Proposed Floor Plans, Basement Floor, Cross Section and Framing Plan – all not dated, not authored – all with a Board date 'received' stamp of August 20, 2015.

2. The applicant shall submit a revised plan for the second floor showing a creation of only one bedroom. The revised plan shall be submitted to the Board of Appeals and approved prior to the issuance of a building permit.

3. There are currently two bedrooms on the first floor which will remain the same according to testimony at the hearing. A bedroom may be added to the second floor ONLY upon the property being connected to the Town sewer as the dwelling is currently under a Deed Restriction as required by the Board of Health. Only one bedroom may be added making the bedroom count three within the dwelling.

4. There shall be no more than three bedrooms allowed on subject property post connection to the sewer.

5. 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.

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

7. 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.)

8. 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: 78-15

Applicant: CALVIN G. BOWEN of Teaticket, MA

Subject Property: 12 Harrington Street, Teaticket, MA
Map 39A, Section 30, 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: 4 – 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 – Acting Chair, 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 78-15 Bowen / Filed w/ Town Clerk 10/2/15