

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: 79-15

APPLICANT(S)/OWNER: CHARLES L. & MARY LOU RENNER of No. Attleboro, MA

DEED/CERTIFICATE: Book 28632 / Page 249

SUBJECT PROPERTY: 496 Palmer Avenue, Falmouth, Massachusetts
Assessor's Map: Map 38, Section 02, Parcel 025, Lot 000A

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of August 21, 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 construct an addition and a dormer to the 2nd floor of the pre-existing nonconforming single-family dwelling on subject property known as 496 Palmer 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 September 24, 2015.
4. The public hearing was terminated on September 24, 2015, wherein the Board consisting of, Clerk Terrence Hurrie sitting as Acting Chairman, Member Ed Van Keuren, Member Paul Murphy as Acting Clerk and Associate John Sutherland sitting as voting member, 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, who was present at the hearing, was represented by Mark Tuleja of MTI Home Designs. Mr. Tuleja 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 to the file by the Town Planner Mr. Currie has no comment.

9/1/2015 Referral submitted to the file by the Building Commissioner Mr. Gore has no comment.

9/21/2015 Referral submitted to the file by the Board of Health Agent David Carignan states: No increase in bedroom count. No expansion of footprint. No negative comments.

Plans submitted by Applicant/Applicant's Representative

8/21/2015 "Plot Plan for Mary Lou Renner 496 Palmer Avenue Falmouth, Mass" drawn by Warwick & Associates Inc. dated 4/16/2015 and with a Board date 'received' stamp of August 21, 2015;

"Existing Floor Plan" – Drawing A6 by MTI Home Designs dated Jan 2014 and with a Board date 'received' stamp of August 21, 2015;

"Renner Residence 496 Palmer Ave Falmouth MA" architectural plans drawn by MTI Home Designs consisting of Drawing A1 'Floor Plan Renner' dated Jan 2014, Drawing A2 'Elevations Renner' dated Jan 2014, Drawing A3 'Sections/Foundation Frame Plan' dated Jan 2014, Drawing A4 'Framing Details Roof/Dormer' dated Jan 2014, Drawing A5 'Foundation Frame Plan' dated Jan 2014 – all Drawings stamped 'received' by the Board on August 21, 2015.

Hearing:

Mr. Tuleja with MTI Home Designs was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition to the second floor above the existing kitchen with a small shed dormer. He explained that the existing dwelling has two bedrooms, both of which are on the second floor. The space being created through the proposed addition above the kitchen will allow for separation between the two bedrooms that will allow for a full bathroom with laundry. The footprint of the dwelling will not change and the added height to the rear of the dwelling above the kitchen will be 3.5' – the overall height of the existing structure will not change.

The Board discussed plans with Mr. Tuleja. All concerns and questions were addressed. It was noted that the existing basement is unfinished and is used for storage and mechanical.

Chair Hurrie asked for any public comment in support or opposition of the proposed additions.

There were no comments.

Member Murphy 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 496 Palmer Avenue in Falmouth contains 3,840 square feet of General Residence zoned land and 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 existing second floor of the dwelling to improve utilization of the second floor and create a full bathroom with laundry. The dwelling structure has a nonconforming setback to the westerly side yard property line of 5.3' and a nonconforming setback to the easterly side yard property line of 8.3' – both side yard setbacks are require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth.

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 pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the addition will enhance the utilization of the second floor and create a true two-bedroom area with a full bathroom and laundry addition. Furthermore, the proposed addition to the second floor does not increase the existing dwelling footprint and thereby does not increase the nonconforming setbacks existing.

The Board finds that the existing dwelling has two bedrooms and through the proposed addition to the second floor approved herein, it will remain a two-bedroom dwelling. The Board further finds through the referral submitted by the Board of Health that there are no issues regarding the proposed addition

approved herein.

The Board finds that the slight increase of height of 3.5' from the proposed addition to the second floor over the kitchen area will not impact the character of the dwelling and it will not change the overall existing height of said dwelling.

In addition to the above findings, the Board finds that the proposed addition to the second floor of the subject dwelling 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 as it will not increase the existing footprint of the dwelling and thereby not increase the existing nonconforming setbacks.
- 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 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; 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 recognized by the Board of Health in a referral submitted to this file, as a two bedroom system.
- 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 service lines as the Board did not receive a referral from the Water Department.
- G. The proposed dwelling reconstruction 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 Sutherland 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 Charles L. and Mary Lou Renner (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an addition and shed dormer to the second floor of the pre-existing nonconforming single-family dwelling known as 496 Palmer Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the addition and shed dormer to the second floor, all setbacks, building height, lot coverage and use of the second floor shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for Mary Lou Renner 496 Palmer Avenue Falmouth, Mass" drawn by Warwick & Associates Inc. dated 4/16/2015 and with a Board date 'received' stamp of August 21, 2015;

- "Existing Floor Plan" – Drawing A6 by MTI Home Designs dated Jan 2014 and with a Board date 'received' stamp of August 21, 2015;

- "Renner Residence 496 Palmer Ave Falmouth MA" architectural plans drawn by MTI Home Designs consisting of Drawing A1 'Floor Plan Renner' dated Jan 2014, Drawing A2 'Elevations Renner' dated Jan 2014, Drawing A3 'Sections/Foundation Frame Plan' dated Jan 2014, Drawing A4 'Framing Details Roof/Dormer' dated Jan 2014, Drawing A5 'Foundation Frame Plan' dated Jan 2014 – all Drawings stamped 'received' by the Board on August 21, 2015.

2. This dwelling shall remain a two-bedroom dwelling.

- 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: 79-15

Applicant: CHARLES L. & MARY LOU RENNER of No. Attleboro, MA

Subject Property: 496 Palmer Avenue, Falmouth, Massachusetts
Map 38, Section 02, Parcel 025, Lot 000A

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, Acting 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:

SP 78-15 Renner / Filed w/Town Clerk 10/2/15