

Zoning Board of Appeals Decisions Decisions for: 03-12-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 88-14

APPLICANT(S): DAVID M. PERETTI of Winchester, MA

OWNER(S): David M. and Gail A. Peretti

DEED/CERTIFICATE: Book 27557 / Page 117

SUBJECT PROPERTY: 15 Striper Lane, East Falmouth, MA
Assessor's Map: Map 40, Section 02A, Parcel 000, Lot 081B

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 16, 2014 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 a garage addition and covered front entry to the existing single-family dwelling on subject property known as 15 Striper Lane, 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 December 18, 2014. The Board unanimously voted [5 – 0] to continue the hearing to January 22, 2015 at 6:30 PM due to lack of information in the file. On January 22, 2015 the representative on behalf of the applicant, Patricia Sciuto, requested a continuation as the architectural plans were not complete. The Board voted unanimously to continue the hearing to March 5, 2015 at 6:30 PM
4. The March 5, 2012 hearing was rescheduled to March 12, 2015 at 6:30 PM due to weather conditions in the Town of Falmouth. The hearing was opened on March 12, 2015 and testimony and public comment were heard.
5. The public hearing was terminated on March 12, 2015 with a Board vote of 5 – 0 to Grant the Special Permit. Board members sitting were Chairman Kenneth Foreman, Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Associate Mark Cool (sitting as voting member) and Associate John Sutherland (sitting as voting member).
6. The Board received documents and information 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

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

9/24/2014 to 11/19/2014 – Various e-mails between ZBA staff and applicant's representative was submitted to the file requesting further plans and information be submitted to the file

Letters/Referrals/E-mails from Town Departments

10/20/2014 A referral was submitted by the Building Commissioner with no comment.

10/23/2014 A referral was submitted by the Planning Department with no comment.

11/18/2014 A referral submitted by the Board of Health Agent states: As configured in the plans provided, the den that is created when the old garage is fitted with a wall to separate it from the new garage fits the definition of a bedroom. It is habitable and is isolated the common living areas of the house by a door. There is no information provided in the file to support the possibility that the existing septic system has the capacity for an additional bedroom.

11/20/2014 A referral submitted by the Engineering Department had standard comments relative to any alterations to any public utilities requires permission from appropriate department and that there shall be no stormwater runoff from site to public property, abutters or roadway.

Plans submitted from Applicant

10/16/2014 "Certified Plot Plan for Proposed Addition & Entry" for 15 Striper Lane, East Falmouth, MA – drawn by Cape & Islands Engineering dated 7/23/14 with a revised date of 9/23/2014 and a Board date 'received' stamp of October 16, 2014

10/16/2014 Drawing A2 "Proposed Floor Plan" drawn by Architecture by SPB dated 7/16/2014 with a Board date 'received' stamp of October 16, 2014

10/16/2014 Drawing A1 "Proposed Right, Left and Front Elevation" drawn by Architecture by SPB dated 7/16/2014 with a Board date 'received' stamp of October 16, 2014

2/18/2014 Drawing A3 'Existing Conditions' (floor plan) and 'Proposed Left Elevation' drawn by Architecture by SPB dated 7/16/2014 and with a Board date 'received' stamp of February 18, 2015

Note: Drawing A2 has a note in handwriting from Contractor of "Unfinished Basement".

Hearing:

Patricia Sciuto was present on behalf of the applicant and reviewed proposed attached garage in front of existing attached garage that was converted to a den/family room and the addition of a covered entry way at front access.

The Board questioned Ms. Sciuto and found that the bedroom count will remain at 3 with no increase, there are no accessory structures proposed, the den will not become a fourth bedroom and there will be a 4' cased open doorway from the den area to the basement and back door egresses and the entrance door from this area to the kitchen will be removed creating an open flow to said den. The space between the den and the proposed garage will be used for storage and will become part of the garage space (see plan for removal of existing garage wall).

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 15 Striper Lane in East Falmouth contains 10,000 square feet of Residential B zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a detached garage and covered entry addition to the existing single-family dwelling on subject property. All setbacks of the structure to property lines are in compliance with Section 240-68 A. and B. of the Code of Falmouth. The lot coverage by structures is nonconforming with 21.3% which is above the 20% maximum allowed by right under Section 240-69 A. of the Code of Falmouth. The proposed garage and covered entry addition will increase the lot coverage by structures to 23.9%. Section 240-69 E. of the Code of Falmouth allows increase of lot coverage by structures up to 25% through a Special Permit by the Board of Appeals. However, the existing lot coverage is pre-existing nonconforming due to a Town Meeting vote in 2003 that reduced the lot coverage requirements in a residential district from 35% to 20% and therefore the applicant applied

under Section 240-3 "Pre-existing structures and uses".

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 attached garage addition and covered entry addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

The Board finds through testimony of the applicant's representative that there are no accessory structures on subject property and none are proposed. The Board further finds through testimony of the applicant's representative that the bedroom count will remain as three bedrooms and there will not be a bedroom created in the den (previously a garage). Furthermore, the Board finds through testimony of the applicant's representative that the basement is used for storage and for mechanical utilities.

The Board finds that the floor plans submitted, specifically Drawing A2 is incorrect as the 3' x 6' kitchen door should have been eliminated according to the applicant's representative; the 4' cased opening is correct and will remain. The Board further finds that the height of the proposed garage will be 16' and not visible from the public way.

In addition to the above findings, the Board finds that the proposed 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 garage as it will not create a nonconforming setback and the increase in the nonconforming lot coverage by structures is allowed by the Board of Appeals 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 a garage is an acceptable accessory use to the primary residential 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 improved by the proposed covered entry without 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 is a three bedroom system according to the referral 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.
- G. The proposed attached garage and covered entry additions 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 Bielan 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 5 – 0 to Grant the Special Permit to David M. Peretti (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an attached garage and covered front entry to the existing single-family dwelling known as 15 Striper Lane, East Falmouth, MA. This special permit is subject to the following conditions:

1. The construction of the attached garage and front covered entry, all setbacks, height of proposed garage, lot coverage and use of existing and proposed structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan for Proposed Addition & Entry" for 15 Striper Lane, East Falmouth, MA – drawn by Cape & Islands Engineering dated 7/23/14 with a revised date of 9/23/2014 and a Board date 'received'

stamp of October 16, 2014

- Drawing A2 "Proposed Floor Plan" drawn by Architecture by SPB dated 7/16/2014 with a Board date 'received' stamp of October 16, 2014 – with the exception noted herein, see Condition 2 below.
- Drawing A1 "Proposed Right, Left and Front Elevation" drawn by Architecture by SPB dated 7/16/2014 with a Board date 'received' stamp of October 16, 2014
- Drawing A3 'Existing Conditions' (floor plan) and 'Proposed Left Elevation' drawn by Architecture by SPB dated 7/16/2014 and with a Board date 'received' stamp of February 18, 2015

2. The applicant shall submit a revised floor plan – Drawing A2 – showing the elimination of the kitchen door which will become a cased opening similar to the 4' cased opening into den area shown of Drawing A2. The applicant's representative stated that this door had been removed and the plans need to be revised. The revised plan shall be submitted to the Board of Appeals and approved by the Zoning Administrator prior to issuance of a building permit.

3. There shall be no accessory structures added to subject property without further review by the Board of Appeals.

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

5. There shall be no bedrooms or sleeping accommodations created within the den area or basement area.

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. 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: 88-14

Applicant: DAVID M. PERETTI

Subject Property: 15 Striper Lane, East Falmouth, Massachusetts
Map 40, Section 02A, Parcel 000, Lot 081B

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.

Kenneth Foreman, Board Chairman

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:

88-14 Peretti SP granted 3/12 - filed Clrk 3/20