

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

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 26-15

APPLICANT(S)/OWNER: 107 BRIDGE STREET REALTY TRUST of Natick, MA

DEED/CERTIFICATE: Certificate #171617, Lot 61 – Plan 314-D

SUBJECT PROPERTY: 107 Bridge Street, East Falmouth, MA
Assessor's Map: Map 45, Section 03, Parcel 000, Lot 061

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 10, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to demolish existing attached one and one-half story, two-car garage and construct an attached two-story, three-car garage on subject property located at 107 Bridge Street, 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 April 23, 2015.
4. The public hearing was terminated on April 23, 2015 wherein the Board consisting of Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren and 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 Michael McGrath, PE, PLS with Holmes and McGrath, Inc. and Denise Bonoli, AIA, 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

4/21/2015 Letter from Samuel Lorusso of 45 Vineyard Street stating support of the proposed project.

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

3/10/2015 Letter dated March 5, 2015 from Holmes and McGrath, Inc. with narrative of project and subject property submitted with application.

3/10 & 11/2015 E-mails between staff and Holmes and McGrath, Inc. regarding info for project

3/11/2015 Copy of Application for Administrative Review by Conservation Commission submitted by Holmes and McGrath, Inc. for file

3/24/2015 Copy of Trust noting Lawrence J. Hill (applicant) as Trustee

3/24/2015 Letter dated March 11, 2015 from Holmes and McGrath, Inc. to Eladio Gore regarding designation of front yard for subject property (signed by Eladio Gore noting Bridge Street is primary front yard)

Letters/Referrals/E-mails from Town Departments

3/11/2015 Referral submitted by the Planning Department with no comment

3/11/2015 Referral submitted by Conservation Commission with no comment

4/14/2015 Referral submitted by the Engineering Department noting that the applicant needs to apply to Engineering for driveway change; stormwater contained on site; and any change or alteration to public utilities requires filing with appropriate Town department

4/15/2015 Referral submitted by the Board of Health Agent, David Carignan states: The proposed addition to the dwelling will increase the number of bedrooms by one for a total of four. Ordinarily, the instructions for designing a septic system in Title 5 would require dividing the total number of habitable by two and rounding down to determine the number of bedrooms to use to calculate the size system required, but only where the total number of habitable rooms exceeds eight. In this case the applicant asserts that there will be a total of nine rooms in the house and that the existing cesspool system is adequate for four bedrooms. Applying the calculation of nine divided by two and rounded down does yield four, but I have no confidence that a cesspool system could handle another bedroom regardless of the formula and have no knowledge of any tool that could be used to determine the exfiltrative capacity of a cesspool.

Plans submitted by Applicant/Applicant's Representative

3/10/2015 "Plan of Proposed Addition" prepared for 107 Bridge Street Realty Trust for Lot 61, #107 Bridge Street in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated March 2, 2015 with a Board date 'received' stamp of March 10, 2015

3/10/2015 "Plan of Existing Conditions" prepared for Lawrence Hill for Lot 61, 107 Bridge Street in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated March 2, 2015 and with a Board date 'received' stamp of March 10, 2015

3/10/2015 "Proposed Design Drawings" prepared for Hill House 107 Bridge Street Falmouth, MA, consisting of four pages drawn by Denise D'Ambrosi Bonoli, AIA, not dated – showing Proposed First and Second Floor Plans and elevations – all with a Board date 'received' stamp of March 10, 2015

3/10/2015 "Existing Conditions Drawings" prepared for Hill House 107 Bridge Street Falmouth, MA, consisting of three pages drawn by Denise D'Ambrosi Bonoli, AIA, not dated – showing Existing First and Second Floor Plan and Basement Plan – all with a Board date 'received' stamp of March 10, 2015

3/24/2015 "Proposed Basement Plan" drawn by Denise D'Ambrosi Bonoli, AIA – not dated – with a Board date 'received' stamp of March 24, 2015

Hearing:

Michael McGrath, PE, PLS with Holmes and McGrath, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition demolition of existing attached, one and one-half story, two-car garage and construction of an attached two-story, three-car garage. Mr. McGrath reviewed the plans and stated there is a nonconforming side yard setback that will not be increased through the proposed reconstruction of the garage, that lot coverage is in compliance with Town code and that the second floor above proposed garage is new master bedroom that increases the bedroom count on subject property from three to four bedrooms. He reiterated that the formula as analysis for bedroom count in this dwelling allows a fourth bedroom without the upgrade from existing cesspools to a Title 5 system. He further stated that the applicant will work with the Board of Health to clear up issue prior to building permit issuance.

The Board discussed plans with Mr. McGrath and Ms. Bonoli. All concerns and questions were addressed including no access from existing second floor to proposed bedroom – only access from first level via a hallway from garage; and that use of proposed bedroom is for family only. In review of the garage Ms. Bonoli explained that the garage will be finished but will not have heat.

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

Mr. Lawrence Hill, Trustee of subject property, stated his support for the project and that he will be residing on site. He showed the Board an actual model of the proposed structure and reiterated that there will be no heat within the garage space.

Member Cool made a motion to close the hearing. Member Sutherland seconded the motion. Motion carried 5 – 0.

Vice Chair Bielan 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 107 Bridge Street in East Falmouth contains 14,866 square feet of Residential B 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 demolish the existing one and one-half story, two-car garage and construct an attached two-story, two-car garage with a bedroom suite on the second level. The existing dwelling has a nonconforming setback of 9.5' to the southerly side yard property line where a 10' setback is required pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures and structures, parking and paving will remain in compliance with Section 240-69 A. through this special permit. The existing dwelling has three bedrooms and the proposed bedroom above the proposed garage will increase the count to four bedrooms. There are two existing cesspools on subject property and the applicant's representative believes that the proposed will not compromise the cesspools. The Board of Health referral questions the additional bedroom without an upgrade to the existing system.

Section 240-3 C. 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 reconstruction of the existing two-car garage creating a second floor for a bedroom suite will not substantially more detrimental than what is existing. The Board further finds that the reconstruction of the garage will not increase the existing nonconforming side yard setback, will not create any new nonconforming setback and that the lot coverage will remain in compliance with Section 240-69 A. of the Code of Falmouth.

The Board finds that the proposed bedroom suite on the second floor of the reconstructed attached garage structure has access only from the first floor off the garage and family room and is not accessible from the existing second floor. The Board further finds through testimony by the applicant's representative that the proposed bedroom suite will be for family use only and there will be no cooking facilities whatsoever within the bedroom suite proposed. Furthermore, the Board finds through testimony of the applicant's representative that there will be no cooking facilities whatsoever installed or placed within the proposed bedroom suite.

The Board finds through a referral submitted by the Board of Health Agent, David Carignan, that he is not satisfied with the increase in the number of bedrooms vs. the continued use of the two existing cesspools. The Board further finds through testimony of the applicant's representative that they [engineers/applicant] will resolve the Board of Health issue prior to issuance of a building permit.

In addition to the above findings, the Board finds that the proposed attached garage reconstruction with additional bedroom on second level 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 attached garage reconstruction as there will be no increase to the existing nonconforming setback, no new nonconforming setbacks and the lot coverage will remain in compliance with Town code.

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 minimal impact on traffic flow and safety as there is one additional bedroom proposed

bringing total to four bedrooms on the property with 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. There are two existing cesspools on subject property with a referral of 'non-satisfaction' from the Board of Health. The Board will condition resolution by applicant prior to sign off on building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. G. The proposed attached garage 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 Sutherland 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 107 Bridge Street Realty Trust (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to demolish existing attached two-car garage and construct attached two-story, two-car garage with living space above to the pre-existing nonconforming single-family dwelling on subject property known as 107 Bridge Street, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The garage reconstruction, all setbacks, lot coverage, height of proposed garage, use of garage and bedroom suite on second level shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Proposed Addition" prepared for 107 Bridge Street Realty Trust for Lot 61, #107 Bridge Street in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated March 2, 2015 with a Board date 'received' stamp of March 10, 2015;

"Plan of Existing Conditions" prepared for Lawrence Hill for Lot 61, 107 Bridge Street in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated March 2, 2015 and with a Board date 'received' stamp of March 10, 2015;

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"Proposed Basement Plan" drawn by Denise D'Ambrosi Bonoli, AIA – not dated – with a Board date 'received' stamp of March 24, 2015.

2. There shall be no cooking facilities whatsoever located in the bedroom suite above the garage, including, but not limited to a stove, oven, microwave oven, toaster oven, hot-plate or nu-wave electric cooking plate.

3. The proposed bedroom suite above the garage space shall not be rented separately from the main dwelling.

4. There shall be no accessory structures located on subject property without prior approval from the Board of Appeals.

5. The proposed bedroom suite above the garage is contingent on the Board of Health's approval for an additional bedroom on subject property. In the event only three (3) bedrooms are allowed on subject property instead of the four (4) proposed, the applicant shall return to the Board of Appeals for approval of revised floor plans. The Board of Appeals staff shall not sign off on building permit application prior to Board of Health approval for project approved herein.

6. The applicant shall submit an as-built plan, post construction, prior to the final sign off of the project by the Board of Appeals and the Building Department.

7. 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.

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 this 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: 26-15

Applicant: 107 BRIDGE STREET REALTY TRUST of Natick, MA

Subject Property: 107 Bridge Street, East Falmouth, MA

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.

Terrence J. Hurrie, 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:

26-15 107 Bridge St. Realty Trust - SP

