

Zoning Board of Appeals Decisions Decisions for: 05-19-2015

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 32-15

APPLICANT(S)/OWNER: FRANK BURKE of Falmouth, MA

DEED/CERTIFICATE: Book 27889 / Page 206

SUBJECT PROPERTY: 73 Allen Avenue, Falmouth, MA
Assessor's Map: Map 47C, Section 02, Parcel 011, Lot 011

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 3, 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 to the pre-existing nonconforming single-family dwelling on subject property known as 73 Allen 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 May 14, 2015.
4. The public hearing was terminated on May 14, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Member Edward Van Keuren and Associate John Sutherland made a decision to Grant the Special Permit with conditions.
5. The applicant was represented at the hearing by Thomas J. Bunker, PLS with BSS Design, Inc., 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

4/24/2015 Note on referral returned from James Kalperis of 96 Allen Avenue stating no objections to proposed plan.

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

None

Letters/Referrals/E-mails from Town Departments

4/6/2015 Referral received from Planning Department with no comment

4/28/2015 Referral received from Engineering Department with standard comments and further stated: Alterations are proposed to the right of way that will require filing a permit with the Engineering Division and alterations to the driveway are not clear; it must not drain into the street and cobble aprons must be at least 1 foot behind the roadway edge. Changes to existing driveways that require a permit require

nonconforming issues (such as cobble aprons too close to the road) to be brought into conformance with the current requirements.

4/28/2015 Referral received from the Building Commissioner with no comment

5/8/2015 Referral received from the Board of Health Agent with no comment

Plans submitted by Applicant/Applicant's Representative

4/3/2015 "Plot Plan – Proposed Addition" prepared for Frank Burke 73 Allen Avenue Falmouth, Massachusetts drawn by BSS Design, Inc. dated April 2, 2015 and with a Board date 'received' stamp of April 3, 2015

4/3/2015 "Frank Burke 73 Allen Ave. Falmouth, MA" architectural plans drawn by Residential Plans consisting of six pages showing existing plan with final revised date of 8/6/2014 and proposed floor, foundation and elevation plans with a final revised date of 1/28/15 – all with a Board date 'received' stamp of April 3, 2015.

Hearing:

Thomas Bunker, on behalf of the applicant, reviewed the existing site conditions and the proposed addition that would be created where existing one-car is attached to dwelling, moving the one-car garage northeasterly 13'. The additional space will allow the kitchen and dining room to be increased and add a sitting area where rear porch is located. Also proposed increased roof over the front walkway area. Mr. Bunker explained that the only nonconformity on the property is the 22' setback from the steps at front entrance of dwelling to the front property line off Allen Avenue. The additional roof area over the front steps will be 23' from front property line. Mr. Bunker stated that the new side yard setback from the addition increasing the footprint will be in compliance with the northeasterly setback to the side property line of 10.3' and the proposed deck would be at 10'. He noted that lot coverage will remain below the maximum percentage allowed in a residential zoned district.

The Board discussed plans with Mr. Bunker. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed additions.

Peter Mili of 83 Allen Avenue spoke in support of the proposed addition.

There was no opposition.

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

Chairman Foreman 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 73 Allen Avenue contains 13,109 square feet of Residential C zoned land that is not located within any overlay district. There is no previous special permit on subject property. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition within the dwelling where the one-car garage is, moving the garage northeasterly over approximately 13'. The space created through the addition will allow the kitchen and dining room to be renovated, add additional sitting area at the back of dwelling where porch was located and extend the roof over the front step area. The existing nonconformity is a 22' setback from the front steps of the dwelling to the front property line off Allen Avenue that is required to be 25' pursuant to Section 240-68 A. of the Code of Falmouth. The proposed roof area over the front porch will not encroach existing nonconforming front setback. The proposed will increase the footprint and have a setback of no less than 10' to the northeasterly side yard property line. Lot coverage will remain in compliance with Section 240-69 A. of the Code of Falmouth. The addition does not increase the existing bedroom count.

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 single-family dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the addition does not increase the existing nonconforming front yard setback, nor does it create any new dimensional nonconformity on subject property. Furthermore, the Board finds that the addition will be an improvement to the utilization of the dwelling for the residents.

The Board finds through testimony of the applicant's representative that there will be no second floor over the garage space as it is proposed as rafter framing. The Board further finds that the existing shed on subject property is including in the lot coverage as noted on the plan submitted for Board's review.

The Board finds that there will be no additional bedrooms created through this special permit application.

In addition to the above findings, the Board finds that the proposed addition 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 the existing nonconforming setback will not be increased, the side and rear setbacks will remain in compliance with Section 240-68 B. of the Code of Falmouth and the lot coverage on subject property will remain in compliance with Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used as a single-family residence.
- 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 as there are several houses in the surrounding area that have been improved such as this; 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 not affected through this special permit application. It is further noted that the Board of Health is required to sign off on the building permit to insure no impact on existing septic system.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling addition 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 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 5 – 0 to Grant the Special Permit to Frank Burke (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to increase the roof area of the front steps and construct an addition within the pre-existing nonconforming single-family dwelling on subject property known as 73 Allen Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition within the dwelling and the roof over front step area, all setbacks, lot coverage and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Addition" prepared for Frank Burke 73 Allen Avenue Falmouth, Massachusetts

drawn by BSS Design, Inc. dated April 2, 2015 and with a Board date 'received' stamp of April 3, 2015; and

- "Frank Burke 73 Allen Ave. Falmouth, MA" architectural plans drawn by Residential Plans consisting of six pages showing existing plan with final revised date of 8/6/2014 and proposed floor, foundation and elevation plans with a final revised date of 1/28/15 – all with a Board date 'received' stamp of April 3, 2015.

2. The applicant shall submit an 'as-built' plan post construction, including all appurtenances to dwelling, to verify the setbacks and lot coverage on subject property. The 'as-built' shall be submitted to the Board of Appeals for approval prior to the final sign-off of the building permit by the Building Department and the Zoning Administrator.

3. There shall be no habitable space created within the garage area.

4. 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.

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

6. 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.)

7. 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: 32-15

Applicant: FRANK BURKE of Falmouth, MA

Subject Property: 73 Allen Avenue, Falmouth, MA
Map 47C, Section 02, Parcel 011, Lot 011

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:

32-15 - Burke SP