

Zoning Board of Appeals Decisions Decisions for: 04-14-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 022-16

APPLICANT/OWNER(S): CHRISTOPHER M. CANNISTRARO & SUSAN T. CANNISTRARO
of Concord, MA

SUBJECT PROPERTY: 46 Narragansett Street, Teaticket, Massachusetts
Assessor's Map: Map 39A, Section 03, Parcel 000, Lot 511

DEED/CERTIFICATE: Book 239 / Page 053 – Cert. #188512 – Lot 511, Plan 4286 N

SUMMARY: Special Permit Granted With Conditions

PROCEDURAL HISTORY

1. Under a date of February 18, 2016, 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 construct a second floor addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 46 Narragansett Street, Teaticket, 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 14, 2016.
4. The public hearing was terminated on April 14, 2016 wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Russell Crawford with Giampietro Architects 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

2/22/2016 Planning Department submitted a referral to the file with no comment.

2/22/2016 Conservation Commission Agent Kasprzyk submitted a referral to the file that states: Work outside Conservation jurisdiction. Request that applicant contain stormwater on their property with drywells and/or trench drain in driveway.

3/1/2016 Falmouth Fire Rescue Department submitted a referral to the file with no comment.

3/7/2016 Engineering Department submitted a referral to the file that states: This application was reviewed only for impacts to public right of ways and public utilities. Narragansett Street is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways. We recommend adding dry wells, rain garden, or other stormwater measure for the roof because the front yard appears to drain towards Narragansett Street.

3/11/2016 Board of Health Agent Carignan submitted a referral to the file that states: The Board of Health recently voted to allow the proposed increase in bedrooms finding that the existing septic system has surplus capacity that the property will be served by the Long Pond Sewer and hookup will be compulsory. Therefore, the usual requirement that a reserve area for future septic system replacement is waived.

4/6/2016 The Board of Appeals staff submitted calculations of lot coverage for subject property and 22 surrounding properties for comparison. Sheet also shows properties structures to one-story, one and a half stories or two story dwellings.

Plans submitted by Applicant/Applicant's Representative

"Site Plan" Proposed Second Floor for 46 Narragansett Street Teaticket Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 12/14/2016, revision date of 2/17/2016 and with a Board date 'received' stamp of Feb. 23, 2016.

"Additions and Alterations to: The Cannistraro Residence 46 Narragansett Street Falmouth, MA" as drawn by Giampietro Architects consisting of Drawing T1 'Title Sheet' dated 12 Feb 2016, Drawing AB 'Existing Plans & Elevations' dated 5 Nov 2016, Drawing A1 'Elevations' dated 12 Feb 2016, Drawing A3 'Floor Plans & Detail' dated 12 Feb 2016 and Drawing A3 'Sections & Details & Framing Plans' dated 12 Feb 2016 - all Drawings have a Board date 'received' stamp of February 18, 2016

Hearing:

Russell Crawford, on behalf of the applicant, reviewed the existing site conditions and proposed addition of a second floor to the existing ranch-style dwelling on subject property. The existing one-story dwelling has three bedrooms; proposed plans will relocate a bedroom to the new second floor area, as well as a sitting room, laundry room and office. There are no additional bedrooms proposed. The office space will have a cased opening so as not to be considered a bedroom and the sitting room is completely open. The proposed ridge height is shown as 27.2'. Mr. Crawford explained that there is an existing shed and if it was to be removed it would lower the lot coverage to 20.4%, however, the applicant wishes to keep the shed as there is no basement or garage for storage on subject property. He further stated that the property will be hooked to Town sewer in the future.

The Board discussed the proposed plans with Mr. Crawford and asked if the shed could be relocated to bring it into compliance with setbacks. As the shed was only erected approximately six (6) years ago, and is therefore not lawfully pre-existing nonconforming, Chairman Bielan suggested the Board vote to include Section 240-69 E. to the application to cover the increase of lot coverage due to shed. Board agreed and voted 5 - 0 to include said section.

Mr. Crawford stated that the shed will be located no less than 3' from side yard property line.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

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

Chairman 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 46 Narragansett Street contains 6,000 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 C. of the Code of Falmouth to construct a second floor addition creating new habitable space within the pre-existing nonconforming single-family dwelling. The front porch of the single-family dwelling has a setback of 21.4' to the front property line off Narragansett Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; a .01' setback from the shed on the northeast corner of the dwelling to the easterly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and lot coverage by structures is nonconforming at 20.4% (without noncomplying shed) which exceeds the 20% maximum allowed by right under Section 240-69 A. of the Code of Falmouth. The Board herein voted 5 – 0 to include Section 240-69 E. of the Code of Falmouth on the application as the shed, placed on subject property within the last six (6) years, increased the lot coverage by structures from 20.4% to 21.6% and the Board herein approved said increase. The "Site Plan" submitted and noted herein shows that the shed in the northeasterly corner of the lot will be removed making the side yard property line less nonconforming at 7.59'. The proposed addition of a second floor to the one-story dwelling discussed herein does not increase any nonconforming setback, does not increase the nonconforming lot coverage and does not create any new nonconformity. The count of three bedrooms in the existing dwelling will remain the same in the proposed second floor addition.

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 of a second floor to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed second floor addition does not increase existing nonconforming setbacks and nonconforming lot coverage by structures; not does it create any new nonconformity. Furthermore, the Board finds through testimony that the subject property will be hooked to Town sewer in the future; and that the Board of Health referral states that if the septic fails prior to being hooked to Town sewer, the property has sufficient area for an upgrade of a septic system.

The Board finds that the proposed "Site Plan" shows the elimination of an existing shed that is .01' from the property line, however the applicant is desirous of keeping the shed as there is no basement or garage for storage. The Board further finds through testimony by the applicant that he is amenable to relocating shed to come into compliance with setbacks.

The Board finds that the dwelling will remain a three-bedroom dwelling through the addition of a second floor. The Board further finds that the architectural plans show that the office proposed on the second floor has a cased opening and therefore not considered a bedroom by DEP standards. Furthermore, the Board finds that the proposed addition of a second floor enhances the utilization of the dwelling by the residents.

In addition to the above findings, the Board finds that the proposed addition of a 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 addition of a second floor as there is no increase in any existing nonconformities on subject property and there will be no new nonconformities created, footprint of dwelling will remain same.

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 dwelling.

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 some homes 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 signed by the Board of Health – see referral submitted to

the file and noted above.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed addition of a second floor to the existing 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 Foreman 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 5 – 0 to Grant the Special Permit to Christopher M. and Susan T. Cannistraro (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 46 Narragansett Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The addition of a second floor, all setbacks, lot coverage, height of structure 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:

- "Site Plan" Proposed Second Floor for 46 Narragansett Street Teaticket Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 12/14/2016, revision date of 2/17/2016 and with a Board date 'received' stamp of Feb. 23, 2016.

- "Additions and Alterations to: The Cannistraro Residence 46 Narragansett Street Falmouth, MA" as drawn by Giampietro Architects consisting of Drawing T1 'Title Sheet' dated 12 Feb 2016, Drawing AB 'Existing Plans & Elevations' dated 5 Nov 2016, Drawing A1 'Elevations' dated 12 Feb 2016, Drawing A3 'Floor Plans & Detail' dated 12 Feb 2016 and Drawing A3 'Sections & Details & Framing Plans' dated 12 Feb 2016 – all Drawings have a Board date 'received' stamp of February 18, 2016

2. There shall be no more than three bedrooms allowed on subject property without approval by the Board of Health.

3. The existing shed on subject property shall be relocated to a location no less than 3' from any side or rear property and said shed shall remain behind the dwelling.

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: 022-16

Applicant: CHRISTOPHER M. CANNISTRARO & SUSAN T. CANNISTRARO
of Concord, MA

Subject Property: 46 Narragansett Street, Teaticket, Massachusetts
Map 39A, Section 03, Parcel 000, Lot 511

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:

SP 022-16 / Cannistraro, filed w/ Town Clerk 4/26/16