

Zoning Board of Appeals Decisions Decisions for: 12-01-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 111-16

APPLICANT/OWNER: RONALD MANION and KATHLEEN MANION
of East Falmouth, MA

SUBJECT PROPERTY: 161 Shorewood Drive, East Falmouth, Massachusetts
Assessor's Map: Map 33, Section 05, Parcel 000, Lot 307

DEED/CERTIFICATE: Book 20384 / Page 222

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 20, 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 an addition, add a covered porch and a new foundation to the pre-existing nonconforming single-family dwelling on subject property known as 161 Shorewood Drive, East Falmouth, MA.
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 1, 2016.
4. The public hearing was terminated on December 1, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman sitting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis sitting as a 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 was represented at the hearing by Steven Cook with Cotuit Bay Design, LLC, 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)

10/20/2016 Steven Cook submitted on behalf of the applicant, an application, fee, copies of Site Plan, existing and proposed floor/elevation plans and photos of existing site and structure

10/20/2016 E-mail response from Steven Cook to ZBA staff regarding use of proposed foundation (crawl space)

Letters/Referrals/E-mails from Town Departments

10/26/2016 Referral submitted to the file by Planning Staff with no comment

10/26/2016 Referral submitted to the file by the Director of Assessing with no comment

10/27/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment

10/31/2016 Referral submitted to the file by Conservation Commission with the comment: Filed NOI, continued until 11/9/2016.

11/21/2016 Referral submitted to the file by the Engineering Department with standard comments with recommendations to post house number visible from road; and to add drywells, rain garden or other stormwater measure for the roof – maintain any stormwater runoff to site.

Plans submitted by Applicant/Applicant's Representative

"Site Plan" prepared for Ronald & Kathleen Manion of House #161 Shorewood Drive East Falmouth, MA as drawn by J.E. Landers-Cauley, P.E. – Sheet 1 of 2 dated 9/21/16 and with a Board date 'received' stamp of October 20, 2016;

"Existing Condition Plan For: Manion Residence 161 Shorewood Drive Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawings EX1 and EX2 (Existing floor and elevation plans) dated 10/20/2016 with a Board date 'received' stamp of October 20, 2016;

"New Addition/Remodeling for: Manion Residence 161 Shorewood Drive Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawings A1 and A2 (showing first floor and elevation proposed plans) dated 10/20/2016 and with a Board date 'received' stamp of October 20, 2016; and

"New Addition/Remodeling for: Manion Residence 161 Shorewood Drive Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawing A3 (Basement floor plan) dated 10/20/2016 and with a Board date 'received' stamp of 10/21/2016.

Hearing:

Steven Cook with Cotuit Bay Design, LLC reviewed the existing site conditions and the proposed addition that will be on the front façade of the existing dwelling to allow an increase to an existing bedroom, create a new bathroom, a new mechanical room and a walk-in closet. A covered porch is also proposed at the southeast corner of the dwelling at the entrance. There are two bedrooms existing, both being renovated and no new bedroom(s) is being added. The applicant is also planning to lift the existing dwelling and put in a new foundation that will have a crawl space and will meet flood zone regulations; dwelling is located in an AE12 flood zone. The lot coverage by structures will be increased from 10.0% to 12.77%, which is still below the 20%/40% maximum coverage allowed by Town Code. The existing height is at 14', the proposed height with the lifting of the dwelling to meet flood plain regulations will be approximately at a 16' height.

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

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

Member Van Keuren made a motion to close the hearing. Member Murphy 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 161 Shorewood Drive in East Falmouth contains 12,000 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District and within the AE12 flood zone. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition expanding an existing bedroom, add a bathroom, construct a covered porch at entrance and put in a new foundation to meet flood zone regulation. The dwelling has a nonconforming setback of 8.9' to the northerly side yard property line and a nonconforming 6' setback to the southerly side yard property line – both are required to be 10' pursuant to Section 240-68 B. of the Code of Falmouth. The existing dwelling has a 14' height that will be increased to approximately 16' in height with the addition of a new foundation that will create a crawl space. There are two existing bedrooms – one will be increased in size and the other renovated; the dwelling will remain a two-bedroom dwelling through this special permit approval.

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 addition to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the two nonconforming setbacks will remain as existing not be increased through this special permit approval. Furthermore, the Board finds that the existing and proposed lot coverage will remain below the maximum percentage allowed under Section 240-69 A. of the Code of Falmouth.

The Board finds that the proposed additions to the pre-existing nonconforming single-family dwelling represented herein will be an improvement to the utilization of the dwelling by its residents and that the proposed will further be an improvement to the neighborhood and subject property.

The Board finds through testimony by the applicant's representative that a new septic system will be installed. There was no referral from the Board of Health verifying what the capacity of the proposed system would be, however, testimony herein was that the dwelling will remain a two-bedroom dwelling. The Board further finds through testimony by the applicant's representative that the applicant's intent is to install drywells at the rear of the dwelling to contain runoff to the site.

In addition to the above findings, the Board finds that the proposed additions to the pre-existing nonconforming 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 additions to the dwelling as there is no increase to the existing nonconforming setbacks, no new nonconforming setbacks and lot coverage will be 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 subject dwelling will be maintained 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 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. A new septic system will be installed on subject property and will require sign off by the Board of Health prior to issuance of a building permit.
- 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 possible update to the water service.
- G. The proposed addition 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.

The Board of Appeals has weighed the effects of the proposed additions to the pre-existing nonconforming dwelling as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony

with the purpose and intent of the Zoning Bylaw.

Member Murphy 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 Ronald and Kathleen Manion (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition, add a covered porch and a new foundation to the pre-existing nonconforming single-family dwelling on subject property known as 161 Shorewood Drive, East Falmouth, MA. This special permit is subject to the following conditions:

1. The construction of the additions and new foundation, all setbacks, height of additions, 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:

- "Site Plan" prepared for Ronald & Kathleen Manion of House #161 Shorewood Drive East Falmouth, MA as drawn by J.E. Landers-Cauley, P.E. – Sheet 1 of 2 dated 9/21/16 and with a Board date 'received' stamp of October 20, 2016;

- "Existing Condition Plan For: Manion Residence 161 Shorewood Drive Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawings EX1 and EX2 (Existing floor and elevation plans) dated 10/20/2016 with a Board date 'received' stamp of October 20, 2016;

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- "New Addition/Remodeling for: Manion Residence 161 Shorewood Drive Falmouth, MA" drawn by Cotuit Bay Design, LLC consisting of Drawing A3 (Basement floor plan) dated 10/20/2016 and with a Board date 'received' stamp of 10/21/2016.

2. There shall be no more than two bedrooms allowed on subject property without further review by the Board of Appeals.

3. The applicant or the applicant's representative shall submit to the Board of Appeals for approval, prior to issuance of a building permit, a revised "Site Plan" for subject property showing the proposed locations of the drywells to be installed on said property.

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 three 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: 111-16

Applicant: RONALD MANION and KATHLEEN MANION of E. Falmouth, MA

Subject Property: 161 Shorewood Drive, East Falmouth, MA
Map 33, Section 05, Parcel 000, Lot 307

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 # 111-16 Manion, filed w/Town Clerk 12/9/16