

## Zoning Board of Appeals Decisions Decisions for: 01-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 125-15

APPLICANT/OWNER(S): ARTHUR M. GILBERT and SUSAN A. GILBERT  
of Bethel, CT

SUBJECT PROPERTY: 247 Edgewater Drive West, East Falmouth, Massachusetts  
Assessor's Map: Map 32, Section 16, Parcel 000J, Lot 013

DEED/CERTIFICATE: Book 14878 / Page 032

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 9, 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 a second floor, creating new habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 247 Edgewater Drive West, 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 January 28, 2016.
4. The public hearing was terminated on January 28, 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 with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and 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)

1/20/2016 E-mails between applicant and staff regarding plans required and submitted.

Letters/Referrals/E-mails from Town Departments

12/10/2015 Referral submitted by the Planning staff with no comment.

12/14/2015 Referral submitted by the Falmouth Fire Rescue Department with no comment.

12/15/2015 Referral submitted by Water Superintendent Rafferty with no comment.

12/18/2015 Referral submitted by Conservation Agent Kasprzyk that states: Approved under an RDA, provided, no foundation rebuild/excavation. A letter from a structural engineer was submitted stating the foundation had been reinforced in the interior.

1/8/2016 Referral submitted by Engineering Department (S. Schluter) that has standard comments regarding any utility alteration requires permit and to maintain stormwater runoff on site.

1/13/2016 Updated 1/26/16: Referral submitted by Health Agent Carignan states: Drawings of proposed conditions, Sheet A-1 and A-2, show a total of two bedrooms proposed. No increase in bedrooms, no increase in footprint, no objections.

#### Plans submitted by Applicant/Applicant's Representative

1/8/2016 "Certified Plot Plan 247 Edgewater Drive West in East Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 7/17/2015 with a final revision date of 9/15/2015, stamped and signed by Christopher Costa, RLS on 9/15/15 and with a Board date 'received' stamp of January 8, 2016;

"Gilbert Residence II 247 Edgewater Dr. West East Falmouth, MA" architectural plans drawn by Leeds A/E consisting of Drawings A-1 'Proposed Conditions - First Floor Plan' dated 4/21/15 with a Board date received stamp of January 8, 2016, Drawing A-2 'Proposed Conditions - Second Floor Plan' dated 6/17/2015, Drawing A-4 'Proposed Conditions Exterior Elevations @ Left Side (south)' dated 6/17/2015, Drawing A-3 'Proposed Conditions Exterior Elevations (east)' dated 6/17/2015, Drawing A-6 'Proposed Conditions Exterior Elevations (west)' dated 6/17/2015, Drawing EC-1 'Existing Conditions' dated 4/3/2015, Drawing EC-3 'Existing Conditions' dated 4/3/2015, Drawing EC-4 'Existing Conditions' dated 4/3/2015 and Drawing S-1 'Framing Plan' with final revision date of 11/26/2015 - all with a Board date 'received' stamp of December 9, 2015.

#### Hearing:

The applicant, Mr. Arthur Gilbert, was present and reviewed the existing conditions of the one-story single-family dwelling and the proposed second floor addition. Mr. Gilbert explained that the foundation of the existing dwelling has been reinforced to withstand the addition of a second floor. The proposed plans meet the FEMA regulations noting that the rear of the property is in a velocity zone and the front portion - where the dwelling is located - is in an AE12 zone. The first floor currently has two bedrooms one of which will be used to create a walk-in closet and expand other existing bedroom to create a master bedroom, thus allowing one bedroom to be relocated to the proposed second story and maintaining a two-bedroom dwelling. The second floor will be completely open except for the proposed bedroom. The second floor will have a deck that will be located over the first floor deck. Mr. Gilbert explained that there will be no increase in the footprint of the existing dwelling and no increase in the number of bedrooms. He stated that the Conservation Commission has approved the project under an "RDA".

The Board discussed the proposed plans with Mr. Gilbert. All concerns and questions were addressed.

Chairman Bielan 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 Foreman 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 247 Edgewater Drive West in East Falmouth contains 6,703 (upland) square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a second floor to the pre-existing nonconforming single-family dwelling on subject property. The existing one-story single-family dwelling has a nonconforming setback of 17.7' to the front property line off Edgewater Drive West that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the dwelling also has an 8.6' setback to the southerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 22.4% as

it exceeds the maximum 20% allowed by right in a residential zoned district under Section 240-69 A. of the Code of Falmouth. The existing dwelling has two bedrooms and the proposed plans show that it will remain a two-bedroom dwelling. The proposed plans will not increase the footprint of the existing dwelling and therefore will not increase the nonconforming setbacks or lot coverage.

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 single-family dwelling is not substantially more detrimental than what currently exists as the surrounding dwellings are of a two-story nature and many of the homes in the area have procured special permits to improve the dwellings and utilization of same. The Board further finds that the proposed second floor addition will not increase the existing dwelling footprint and therefore will not increase the nonconforming setbacks and lot coverage on subject property. Furthermore, the proposed second floor addition will improve the utilization of the dwelling by its residents.

The Board finds through testimony by the applicant and reference made on the referral from Conservation Commission, that the basement was reinforced to withstand the addition of a second floor to the single-family dwelling on subject property.

The Board finds that the dwelling will meet the flood zone regulations. It is noted on the plan that the dwelling is located on the portion of the land that is located in the AE12 flood zone and the rear of the property is located in the Velocity EL14 zone. The Board further finds that the Conservation Commission has approved an "RDA" for the proposed project.

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 as the footprint of the dwelling will not be increased and the nonconforming setbacks and lot coverage by structures will remain as existing.
- B. The site is suitable for the proposed use as the property is zoned residential and has been, and will remain, a single-family dwelling 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 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 signed off as a two bedroom system by the Board of Health (see Board of Health referral).
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition of a second floor 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 a Special Permit to Arthur M. and Susan A. Gilbert (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 247 Edgewater Drive West, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition of a second floor, number of bedrooms, setbacks, lot coverage, height of dwelling 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:

- "Certified Plot Plan 247 Edgewater Drive West in East Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 7/17/2015 with a final revision date of 9/15/2015, stamped and signed by Christopher Costa, RLS on 9/15/15 and with a Board date 'received' stamp of January 8, 2016;

- "Gilbert Residence II 247 Edgewater Dr. West East Falmouth, MA" architectural plans drawn by Leeds A/E consisting of Drawings A-1 'Proposed Conditions - First Floor Plan' dated 4/21/15 with a Board date received stamp of January 8, 2016, Drawing A-2 'Proposed Conditions - Second Floor Plan' dated 6/17/2015, Drawing A-4 'Proposed Conditions Exterior Elevations @ Left Side (south)' dated 6/17/2015, Drawing A-3 'Proposed Conditions Exterior Elevations (east)' dated 6/17/2015, Drawing A-6 'Proposed Conditions Exterior Elevations (west)' dated 6/17/2015, Drawing EC-1 'Existing Conditions' dated 4/3/2015, Drawing EC-3 'Existing Conditions' dated 4/3/2015, Drawing EC-4 'Existing Conditions' dated 4/3/2015 and Drawing S-1 'Framing Plan' with final revision date of 11/26/2015 - all with a Board date 'received' stamp of December 9, 2015.

2. There shall be no more than two bedrooms located on subject property.

3. 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.

4. 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.)

5. 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: 125-15

Applicant: ARTHUR M. GILBERT and SUSAN A. GILBERT of Bethel, CT

Subject Property: 247 Edgewater Drive West, East Falmouth, Massachusetts  
Map 32, Section 16, Parcel 000J, Lot 013

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.

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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 125-15 Gilbert filed w/ Town Clerk 2/9/16