

Zoning Board of Appeals Decisions Decisions for: 10-06-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 094-16

APPLICANT/OWNER(S): NICK V. MIMINOS and DIANE E. MIMINOS of North Falmouth

SUBJECT PROPERTY: 93 Alder Lane, North Falmouth, Massachusetts
Assessor's Map: Map 13, Section 02, Parcel 002A, Lot 185

DEED/CERTIFICATE: Certificate 100831 – Plan 6569-Q, Sheet 8

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 26, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-23 G. (1) of the Code of Falmouth to construct an addition to the pre-existing single-family dwelling and an addition to the attached garage structure on subject property known as 93 Alder Lane, North 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 October 6, 2016.
4. The public hearing was terminated on October 6, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie and Member Ed Van Keuren 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 Attorney Kevin P. Klauer, II with Ament Law Firm, 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)

08/26/2016 Attorney K. Klauer submitted on behalf of the applicant, the application for a special permit, fee, letter of authorization, copies of a plot plan, floor plans – existing and proposed and a sheet noting properties in the area showing lot sizes, stories of dwellings and area of said dwellings

Letters/Referrals/E-mails from Town Departments

8/29/2016 Referral from Planning Department staff submitted to the file with no comment

8/30/2016 Referral from Conservation Commission submitted to the file with a comment: Control stormwater on property – wetlands down slope across the street.

09/06/2016 Referral from Falmouth Fire Rescue Department submitted to the file with no comment

09/06/2016 Referral from Town Assessor submitted to the file with no comment

09/09/2016 Referral from Engineering Department submitted to the file with standard comments and the recommendation to add drywells, rain garden or other stormwater measure for the roof.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan 93 Alder Lane in Falmouth, Massachusetts" Sheet 1 of 1 drawn by Cape & Islands Engineering dated 8/15/16 with a final revision date of 9/16/2016, stamped, signed and dated by Matthew C. Costa, PLS on 9/16/2016 and with a Board date 'received' stamp of September 19, 2016;

"Miminos Residence 93 Alder Lane Falmouth, MA 02540" plans drawn by Longfellow Design Build consisting of: 'As Built Basement Plan' Drawing A1.0 dated 8/16/2016, 'As Built First Floor Plan' Drawing A1.1 dated 8/16/2016, 'As Built Exterior Elevations' Drawing A2.0 dated 8/16/2016, 'As Built Exterior Elevations' Drawing A2.1 dated 8/16/2016 and 'As Built Exterior Elevations' Drawing A2.2 dated 8/16/2016 - received by the Board on 8/26/2016; and

"Miminos Residence 93 Alder Lane Falmouth, MA 02540" plans drawn by Longfellow Design Build consisting of: 'Proposed Basement Plan' Drawing A1.0 dated 8/22/2016, 'Proposed First Floor Plan' Drawing A1.1 dated 8/22/2016, 'Proposed Exterior Elevations' Drawing A2.0 dated 8/22/2016, 'Proposed Exterior Elevations' Drawing A2.1 dated 8/22/2016 and 'Proposed Exterior Elevations' Drawing A2.2 dated 8/22/2016 - all with a Board date 'received' stamp of August 26, 2016

Hearing:

Attorney Klauer reviewed the existing Residential B zoned lot and explained that the applicants have owned the property for 30 years. The existing dwelling is a three-bedroom, 3,095 square foot structure that has an existing 5.9' setback from the deck to the rear property line; the lot coverage by structure exists at 20.5% and the existing shed is located over the rear lot line. The applicants propose to eliminate the shed from the property completely; remove the existing rear deck and steps and construct an addition that will be conforming to the required setback. The applicant is also proposing a 121 square foot bay addition to the existing attached garage in order to store a golf cart. The proposed additions will increase lot coverage by structures to 22.7%, which may be allowed through this special permit request. The existing dwelling is a one-story, three-bedroom structure. The proposed addition will allow the applicant to re-locate one of the existing bedrooms to the addition to create a new master bedroom with bath. The space that was once a bedroom will become an office and have a four foot (4') cased opening. He noted that the height of the existing dwelling is 19.7' in height and the addition will have a height of 17.4'. There will be no change to the existing basement, which is partially finished and used as a den. Attorney Klauer reviewed the properties he submitted showing 26 properties in the neighborhood, their lot size, floor area of dwellings and number of stories in each dwelling structure, which shows that ten of the dwellings in the area had a larger mass calculation than the existing ranch style dwelling that is subject property. He further noted that there will be drywells installed on the property to maintain stormwater runoff on the property.

The Board discussed plans with Attorney Klauer and asked about the existing septic system. Attorney Klauer said that the applicants intend to put in a new septic system. 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 Foreman made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 4 - 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 93 Alder Lane in North Falmouth contains 15,061 square feet of Residential B zoned land that is located in the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. and 240-23 G. (1) of the Code of Falmouth to construct an addition to the existing dwelling and additional 121 square foot bay to the side of the existing attached garage to store a golf cart. The nonconforming shed and nonconforming deck at the rear of the dwelling will be eliminated completely, which eliminates nonconforming setbacks – all other setbacks are in compliance with Section 240-68 A. and B. of the Code of Falmouth. The lot coverage by structures exists at 20.5%, which exceeds the 20% maximum allowed in a residential district under Section 240-69 A. – making it nonconforming. The proposed additions will increase the lot coverage by structures to 22.7%, which is allowed by special permit from the Board of Appeals under Section 240-69 E. of the Code of Falmouth. The existing dwelling is a one-story, three-bedroom structure and will remain a one-story, three-bedroom structure through this special permit (see floor plans submitted to the file). The basement is partially finished with den space that, according to the applicant's representative, is not used as a bedroom. The height of the addition that creates a new master bedroom and bath area will have a height of 17.4' which is of lesser height than the existing dwelling at 19.7'.

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 elimination of the deck and shed on subject property will eliminate the nonconforming setbacks; the proposed additions will not create any new nonconforming setbacks to the pre-existing nonconforming dwelling and the addition which is mostly at the rear southwest corner of the dwelling will not substantially more detrimental than what currently exists. The Board further finds that the changes to the floor plans through the proposed addition, will be an enhancement to the utilization of the dwelling by its residents. Furthermore, the Board finds that the proposed additions and increase in the lot coverage by structures are in keeping with the character of the neighborhood.

Section 240-23 of the Code of Falmouth – "Special permit uses." – Sub-section G. (1) requires a special permit from the Board of Appeals for accessory uses, in this case garage space for more than two cars if the lot is 30,000 square feet or less; or if the footprint is more than 900 square feet of 50% of the footprint of the principal structure – whichever is less.

The Board finds that there will be an addition to the existing attached two-car garage on subject property of approximately 121 square feet (according to plan) to store a golf cart. The Board further finds that the subject property is less than 30,000 square feet in size. Furthermore, the Board finds that based on the additional bay to the existing two-car garage and the subject property being less than 30,000 square feet in size, relief under Section 240-23 G. (1) is appropriately before the Board.

The Board finds that testimony by the applicant's representative that drywells to control any runoff will be installed on subject property at the time the additions are being constructed. The Board further finds through testimony by the applicant that the applicant intends to put in a new septic system. The Board notes that there was no referral from the Board of Health regarding existing wastewater system – whether it is a cesspool or a three-bedroom septic system. The Board noted that if the system is upgraded to a four-bedroom septic system, verification of said upgrade will be submitted to the Board of Appeals and at that point a note to the file on the status of the proposed 'office' shown on A1.1 of the proposed floor plans may be made to eliminate the 4' cased opening. In the event there is no verification of a septic upgrade to a four-bedroom dwelling then the 4' cased opening to the proposed 'office' space will remain conditioned.

The Board finds through testimony by the applicant's representative that a portion of the basement is used for a den and that there are no bedrooms located within the basement area.

In addition to the above findings, the Board finds that the proposed additions to the existing dwelling as noted herein 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 as the nonconforming shed located over the rear property line and the deck with a nonconforming setback will be removed and the setback nonconformities eliminated; and the proposed additions will meet setback requirements according to Town.

- 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 through this special permit approval.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms proposed herein 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 sewage disposal system is in place for the existing three-bedroom dwelling and no referral from the Board of Health on said size of system was submitted to the file. The Board has noted herein conditions in the event the septic system is upgraded to a four-bedroom system (see condition below).
- 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 updating of water system as there was no referral from the Water Department submitted to the file.
- G. The proposed addition to the dwelling and attached garage 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 addition to the dwelling and addition to the attached garage on subject property 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Foreman 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 4 – 0 to Grant the Special Permit to Nick V. and Diane E. Mimos (herein referred to as Applicant) under Section(s) 240-3 C. and 240-23 G. (1) of the Code of Falmouth to construct an addition to the pre-existing nonconforming dwelling and an addition to the existing attached garage on subject property known as 93 Alder Lane in North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The removal of the shed over the rear property line, the removal of the nonconforming deck at the rear of the dwelling, the addition to the dwelling, the addition to the attached garage, all setbacks, lot coverage, height of additions and use of the 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 93 Alder Lane in Falmouth, Massachusetts" Sheet 1 of 1 drawn by Cape & Islands Engineering dated 8/15/16 with a final revision date of 9/16/2016, stamped, signed and dated by Matthew C. Costa, PLS on 9/16/2016 and with a Board date 'received' stamp of September 19, 2016;
- "Mimos Residence 93 Alder Lane Falmouth, MA 02540" plans drawn by Longfellow Design Build consisting of: 'As Built Basement Plan' Drawing A1.0 dated 8/16/2016, 'As Built First Floor Plan' Drawing A1.1 dated 8/16/2016, 'As Built Exterior Elevations' Drawing A2.0 dated 8/16/2016, 'As Built Exterior Elevations' Drawing A2.1 dated 8/16/2016 and 'As Built Exterior Elevations' Drawing A2.2 dated 8/16/2016 – received by the Board on 8/26/2016; and
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2. There shall be a 4' cased opening to the proposed 'office' space noted on Drawing A1.1 of the proposed plans noted in Condition 1 above. In the event the system is upgraded to a four-bedroom septic system,

verification of said upgrade will be submitted to the Board of Appeals and at that point a note to the file on the status of the proposed 'office' shown on A1.1 of the proposed floor plans may be made to eliminate the 4' cased opening. In the event there is no verification of a septic upgrade to a four-bedroom dwelling then the 4' cased opening to the proposed 'office' space will remain as conditioned herein.

3. There shall be no bedrooms or sleeping accommodations created within the basement space within the subject 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 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: 094-16

Applicant: NICK V. MIMINOS and DIANE E. MIMINOS of North Falmouth, MA

Subject Property: 93 Alder Lane, North Falmouth, Massachusetts
Map 13, Section 02, Parcel 002A, Lot 185

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 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#094-16 Mimos, filed w/the Town Clerk 10/13/16

