

Zoning Board of Appeals Decisions Decisions for: 09-01-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 081-16

APPLICANT/OWNER(S): THOMAS G. DURHAM & JUDITH T. DURHAM
of Falmouth, MA

SUBJECT PROPERTY: 12 Johnson Street, Falmouth, Massachusetts
Assessor's Map: Map 46, Section 00M, Parcel 000, Lot 012

DEED/CERTIFICATE: Book 28352 / Page 199

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 27, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct an addition and an attached garage to the existing single-family dwelling, increasing the lot coverage by structures beyond 20%, on subject property known as 12 Johnson Street, 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 September 1, 2016.
4. The public hearing was terminated on September 1, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis, sitting as 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 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

8/22/2016 Letter of support for the proposed project from William and Mary Curran (both signed) of 74 Jericho Path Road, was submitted to the file.

8/22/2016 Letter of support for the proposed project from Robert and Constance Bartelson (both signed) of 15 Johnson Street, was submitted to the file.

8/24/2016 Letter of support for the proposed project from Eileen and William Looney (both signed) of 8 Johnson Street, was submitted to the file.

8/29/2016 Letter of support for the proposed project from Barry and Mary Whitney (both signed) of 16 Johnson Street, was submitted to the file.

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

7/27/2016 Attorney Kevin P. Klauer, II submitted, on behalf of the applicant(s) an application for special

permit, fee, applicant authorization, plans and a letter date July 26, 2016.

8/1/2016 Letter dated August 1, 2016 from Attorney Klauer submitted with additional plans for application.

8/15/2016 Letter from Attorney Klauer regarding information on subject property and lot coverage by structures, submitted with "Size Calculations for Surrounding Properties".

Letters/Referrals/E-mails from Town Departments

7/28/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment.

7/28/2016 Referral submitted to the file by the Conservation Commission Agent that states: Contain stormwater created on property and off public road.

7/28/2016 Referral submitted to the file by the Planning Department staff with no comment.

7/29/2016 Referral submitted to the file by the Town Assessor with no comment.

8/15/2016 Referral submitted to the file by the Marine & Environmental Services with no comment.

8/16/2016 Referral submitted to the file by the Engineering Department (S. Schluter, PE) that noted standard comments and noted: We recommend adding dry wells, rain garden, or other stormwater measure for the roof. The driveway will require stormwater management since it will be paved, it cannot drain towards the street and must meet all current driveway requirements, please see the DPW Engineering Division office or go online for requirements and application.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan 12 Johnson Street in Falmouth, Massachusetts" prepared for Thomas G. and Judith T. Durham drawn by Cape & Islands Engineering dated 3/9/16 stamped and signed by Matthew C. Costa, PLS on 3/24/16 and with a Board date 'received' stamp of July 27, 2016;

"Durham Residence 12 Johnson Street Falmouth, MA 02540" drawn by Longfellow Design - Build consisting of Drawings RA1.0 - 'Existing First Floor and Existing Basement' plans dated 7/28/2016, RA1.1 - 'Existing Roof Level and Existing Second Floor' plan dated 7/28/2016, RA2.0 - 'Existing North and South Elevations' dated 7/28/2016 and RA2.1 - 'Existing East and West Elevations' dated 7/28/2016 - all with a Board date 'received' stamp of August 1, 2016; and

"Durham Residence 12 Johnson Street Falmouth, MA 02540" drawn by Longfellow Design - Build consisting of Drawings A1.0 - 'Proposed Basement Plan' dated 7/28/2016, A1.1 - 'Proposed First Floor Plan' dated 7/28/2016, A1.2 - 'Proposed Second Floor Plan' dated 7/28/2016, A2.0 - 'Proposed Exterior South and North Elevations' dated 7/28/2016 and A2.1 - 'Proposed Exterior East and West Elevations' dated 7/28/2016 - all plans with a Board date 'received' stamp of August 1, 2016.

Hearing:

Attorney Klauer reviewed the existing site conditions noting the current lot coverage by structures at 17.2% and the existing height of the dwelling structure is 17.1'. He then reviewed the proposed construction of a one-car garage and master bedroom to be attached to the north façade of the existing dwelling. The addition will be 50' in length and 12.75' wide; the addition will meet all setback requirements according to code; and the height will be 14.6', which is less than existing dwelling. Attorney Klauer stated that the dwelling currently has four bedrooms and it will remain a four-bedroom dwelling through this addition as one of the existing first floor bedrooms will be converted to a master bath for the new master bedroom addition. He reviewed lot coverage by structures noting that the coverage will be increased from the existing 17.2% to 24.2% and that said increase may be allowed by this Board under Section 240-69 E. based on criteria that includes any affect to neighbors by structures size and height, shall not create shadowing to adjacent property and shall not impact any coastal embayment. He then reviewed and explained the lot coverage calculations he submitted to the file.

The Board discussed plans with Attorney Klauer and asked if the applicant would be amenable to

removing one of the two existing sheds on subject property (one is shown to be on the property line on the at the northwest corner of the property) and asked about basement use. Attorney Klauer stated that the applicant would be amenable to removing the shed 100 square foot shed shown at the northwest corner of the lot which will reduce the lot coverage by structures to 23.3%. He also noted that basement is unfinished.

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 Murphy 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 12 Johnson Street in Falmouth contains 8,800 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to construct an addition and attached garage that will exceed the 20% lot coverage maximum by structures under Section 240-69 A. of the Code of Falmouth. The existing structures on subject property, including two shed structures, is 17.2%; the proposed addition will increase the lot coverage to 24.4% by structures. Under Section 240-69 E. the Board may approve this increase to lot coverage after consideration of the criteria set forth in said section. The existing dwelling contains four bedrooms, which count will not be increased through the addition proposed herein.

Section 240-69 of the Code of Falmouth – “Maximum lot coverage.” Sub-section E. requires that the Board of Appeals, before granting a special permit allowing lot coverage by structures to increase up to 25%, must take into consideration the size and height of the structure proposed project in relation to the average size and height of structures in the neighborhood, if there are an effects of shadowing on adjacent properties through the proposed project, if there is any impact on views and vistas from a public way through the proposed project and if there will be any effect on a coastal embayment from the proposed project.

The Board finds after consideration of Section 240-69 E. of the Code of Falmouth, that the size and height of the proposed addition to the dwelling is in keeping with the neighborhood; that the proposed addition will not create any shadow effect on any adjacent lot; that there will be no impact from any view and vista from a public way from the proposed addition; and that there will be no impact on any coastal embayment through the proposed addition. The Board further finds that the addition is in keeping with the character of the surrounding neighborhood. Furthermore, the Board finds that there were four letters of support submitted to the file from abutters of subject property – no letters of opposition.

The Board finds that the proposed addition to the single-story dwelling will not be substantially more detrimental than what currently exists as the addition will be less in height at 14.6' than the existing dwelling height of 17.1'. The Board further finds that there are currently no nonconforming setbacks on subject property and that the proposed addition will be in compliance with Section 240-68 B. and not create any new nonconformities. Furthermore, the Board finds that the proposed addition will be an enhancement to the utilization of the dwelling by its residents.

The Board finds through testimony by the applicant's attorney that the applicant is amenable to removing the 100 square foot shed that is located in the northwest corner of the subject property encroaching abutting lot. The Board further finds that the removal of the shed will reduce the lot coverage by structures to approximately 23.3% and that the applicant will be amenable to submitting a revised plot plan showing the removal of said shed and the revised lot coverage calculation.

The Board finds that the subject dwelling is a four-bedroom dwelling and according to testimony by the applicant's attorney and through plans submitted, the dwelling will remain a four bedroom dwelling through this special permit.

In addition to the above findings, the Board finds that the proposed addition of a one-car garage and addition to create a new master bedroom to the existing dwelling 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 addition will meet setback requirements and the increase in lot coverage by structures was reviewed through this special permit.
- B. The site is suitable for the proposed use as the property is zoned residential and the dwelling discussed herein is, and shall remain, a four bedroom 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 remain that of a single-family dwelling with an attached one-car garage and will not have any impact on the neighborhood's visual character; 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 four bedroom system by the Board of Health according to testimony. It is noted that the Board of Health did not submit a referral for this application.
- 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.
- G. The proposed addition to the 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 addition to the single-family 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Murphy 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 Thomas G. Durham and Judith T. Durham (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct an addition and attached one-car garage to the existing dwelling on subject property known as 12 Johnson Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The proposed addition to the dwelling and the attached one-car garage, all setbacks, lot coverage and use of four-bedroom single-family dwelling with attached one-car garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Certified Plot Plan 12 Johnson Street in Falmouth, Massachusetts" prepared for Thomas G. and Judith T. Durham drawn by Cape & Islands Engineering dated 3/9/16 stamped and signed by Matthew C. Costa, PLS on 3/24/16 and with a Board date 'received' stamp of July 27, 2016;
 - "Durham Residence 12 Johnson Street Falmouth, MA 02540" drawn by Longfellow Design – Build consisting of Drawings RA1.0 – 'Existing First Floor and Existing Basement' plans dated 7/28/2016, RA1.1 – 'Existing Roof Level and Existing Second Floor' plan dated 7/28/2016, RA2.0 – 'Existing North and South Elevations' dated 7/28/2016 and RA2.1 – 'Existing East and West Elevations' dated 7/28/2016 – all with a Board date 'received' stamp of August 1, 2016; and
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2. The applicant shall submit an as-built plan prior to final inspection by building department and/or Zoning Administrator showing the removal of the 100 square foot shed at the northwest corner of the property, verify the reduction of the lot coverage by structures to approximately 23.3% and verify the setback of the addition to the northerly side yard property line and the setback to the front property line off Johnson Street. There shall be no new nonconforming setbacks created through this special permit approval.

3. There shall be no more than four bedrooms allowed on subject property and there shall be no bedrooms or sleeping accommodations created within the basement 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: 081-16

Applicant: THOMAS G. DURHAM and JUDITH T. DURHAM of Falmouth, MA

Subject Property: 12 Johnson Street, Falmouth, Massachusetts
Map 46, Section 00M, Parcel 000, Lot 012

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 081-16 Durham / Filed w/Town Clerk 9/9/16