

Zoning Board of Appeals Decisions Decisions for: 03-10-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 020-16

APPLICANT/OWNER(S): CONSTANCE J. DOTY of Jamaica Plain, MA

SUBJECT PROPERTY: 65 Harrington Street, Teaticket, MA
Assessor's Map: Map 39A, Section 12, Parcel 000, Lot 023

DEED/CERTIFICATE: Certificate 150089 – Lots 23, 24, 25 & 26 – Plan 4286-A (Plate 7)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 9, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a screen porch, deck, front porch and a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 65 Harrington 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 March 10, 2016.
4. The public hearing was terminated on March 10, 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 represented at the hearing by Attorney Laura Moynihan 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

3/8/2016 Letter in support of proposed project from James and Patricia Blessington of 64 Harrington Street.

3/8/2016 Letter in support of proposed project from William and Barbara Cullen of 60 Harrington Street.

3/2/2016 Letter in support of proposed project from Mary Cusack of 66 Montauk Street.

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

3/8/2016 Attorney Moynihan submitted several pages of information regarding homes in the general vicinity of subject property regarding lot coverage and bulk calculations. Information submitted consisted of property cards, photos of homes and property descriptions (generated from Town Assessors' site).

2/9/2016 Attorney Moynihan submitted with the application, plans and fee, copies of 5 special permit decisions for properties within the general vicinity of subject property. The special permits granted were for raze and reconstruction of a one-story dwelling into a two story dwelling, additions that increase lot

coverage and second floor additions.

Letters/Referrals/E-mails from Town Departments

3/10/2016 A referral submitted by Board of Health Agent David Carignan states: The property is located within the Long Pond Sewer Service Area and will eventually be connected to the Town sewer. At that point, the DPW may allow as many as four bedrooms for each property in the sewer area, but until that time, the development of the property will be limited to the existing number of bedrooms tow, unless it can be demonstrated that the existing septic system can support the additional flows from additional bedrooms.

3/7/2016 A referral submitted by the Engineering Department (S. Schluter) states: This application was reviewed only for impacts to public right of ways and public utilities. Harrington Street is a Public right of way I 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 Harrington Street.

2/17/2016 A referral submitted by Conservation Commission Agent Mark Kasprzyk states: Outside of jurisdiction from ConComm.

2/17/2016 A referral submitted by the Marine Environmental Services had no comment.

2/12/2016 A referral submitted by Building Commissioner Eladio Gore states: Not in a Flood Zone / no issues.

2/11/2016 A referral submitted by the Planning Department staff has no comment.

2/11/2016 A referral submitted by the Falmouth Fire Rescue Department has no comment.

Plans submitted by Applicant/Applicant's Representative

2/9/2016 "Site Plan Proposed Renovations" for Constance Doty 65 Harrington Street Teaticket Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 9/9/2015 – revised 12/23/2015 – the plan is stamped, signed and dated by Gary S. Labrie, PLS on 1/7/2016 and with a Board date 'received' stamp of February 9, 2016'

"Doty Residence 65 Harington Street East Falmouth, MA" architectural plans drawn by JB Designs dated 12/23/2016 consisting of Page 1 of 6 showing proposed elevations and Page 2 of 6 shown existing and proposed floor plans – both with a Board date 'received' stamp of February 9, 2016

Hearing:

Attorney Moynihan explained that the plan is to eliminate the existing shed and rear deck on subject property, construct a new expanded front porch that will be covered, add a screen porch (or possibly a three-season room) with a deck behind it on the east side of the dwelling and to construct a second floor to the existing one-story dwelling structure to create two additional bedrooms. She explained that the property will be hooked to Town sewer and the applicant would like to have additional space for family and guests; and upon hearing the referral by the Engineering Department, Attorney Moynihan stated that the applicant is amenable to adding drywells to the site. Attorney Moynihan stated that occupancy for the bedrooms will not commence until property is actually hooked to sewer – hopefully in July of 2016. She reviewed the calculations she prepared for the lot coverage and bulk.

The Board discussed plans with Attorney Moynihan regarding the possibility of a three-season room instead of a screen porch and possible alterations to size of screen porch or deck to bring lot coverage down to 20%.

Attorney Moynihan stated that the proposed deck off the screen porch can be decreased to meet the 20%

lot coverage by structures and that if a three-season is allowed, there would be no heat installed.

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 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 65 Harrington Street contains 9,600 square feet of Residential C zoned land that is located within the Great Pond and Little Pond Coastal Pond Overlay Districts. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct additions to the pre-existing nonconforming single-family dwelling that would increase lot coverage by structures above the 20% maximum allowed for subject property in this zoning district. The structure has a nonconforming setback of 21.9' to the front yard property line off Harrington Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The applicant would like to construct a second floor to add two additional bedrooms to the existing two bedroom dwelling, as well as construct a screen porch, deck and a new covered front porch. The proposed front porch would be minimally less nonconforming than the existing 21.9' setback [22']. The subject property will be connected to Town sewer in the very near future (possibly July of 2016) which allows for the two additional bedrooms.

The applicant is uncertain at the time of the hearing if a screen porch will be constructed or a three-season room. Testimony by the applicant's representative was that there is no intention of installing heat if a three-season room is constructed.

After discussion with the Board the applicant's representative stated that the applicant would be amenable to installing drywells on subject property and to decrease the size of the proposed deck so as not to exceed 20% lot coverage by structures, thus eliminating the need for relief under Section 240-69 E. of the Code of Falmouth.

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 additions to the pre-existing nonconforming single-family dwelling not be substantially more detrimental than what currently exists. The Board further finds that there will be no extension of an existing nonconformity, nor will there be any new nonconformities. Furthermore, the Board finds through testimony by the applicant's representative that the proposed deck off the screen porch will be decreased in order to comply with the 20% maximum by right lot coverage by structures under Section 240-69 A. of the Code of Falmouth and thereby eliminating said relief as requested in the application.

The Board finds that four (4) letters of support of the proposed project by abutters were submitted to the file.

The Board finds based on the referral submitted to the file by the Board of Health Agent, that the proposed bedrooms will not be available for occupancy until the property has been connected to the Town sewer. The Board further finds the Town is currently installing sewer pipes in the general vicinity and is scheduled for the fall according to the 'Little Pond Sewer System Area' projections. Furthermore, this Board finds that there shall be no more than four (4) bedrooms allowed on subject property after being connected to the Town sewer.

The Board finds that the proposed plans will need to be revised prior to issuance of a building permit noting the changes discussed and agreed to by the applicant during the hearing process, which includes decreasing the proposed deck so that compliance of 20% lot coverage by structures can be maintained,

removing the shed from subject property and location of drywells on subject property. The Board further finds that that a post construction 'as built' will be required to verify front yard setback and lot coverage by structures at 20% or less.

The Board finds that the applicant may change the original plan for a screen porch to a three-season room and that, according to applicant's representative, there shall be no heat installed in the three-season room.

The Board finds that there is an existing one-story, two-bedroom single-family dwelling on subject property that will be made into a two-story, four-bedroom single-family dwelling that will not be more nonconforming than what currently exists.

In addition to the above findings, the Board finds that the proposed additions to the pre-existing nonconforming single-family dwelling is 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 as, based on the above findings, the applicant is amenable to maintaining lot coverage by structures on subject property to 20% or less and that the nonconforming setback to the front property line will not be less than the existing 21.9'.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- C. There will be no impact on traffic flow and safety due to the increase of two additional bedrooms as there was testimony that the dwelling is intended for family and guest use only 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 currently for a two-bedroom dwelling and will be removed when the subject property is connected to the Town sewer.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. G. The proposed additions 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 Constance J. Doty of Jamaica Plain (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a screen porch, deck, covered front porch and a second floor to the pre-existing nonconforming single-family dwelling on subject property known as 65 Harrington Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The proposed additions to the existing dwelling, all setbacks and lot coverage by structures discussed herein and use of dwelling and screen porch or three-season room shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan Proposed Renovations" for Constance Doty 65 Harrington Street Teaticket Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 9/9/2015 – revised 12/23/2015 – the plan is stamped, signed and dated by Gary S. Labrie, PLS on 1/7/2016 and with a Board date 'received' stamp of February 9, 2016'

- "Doty Residence 65 Harington Street East Falmouth, MA" architectural plans drawn by JB Designs dated 12/23/2016 consisting of Page 1 of 6 showing proposed elevations and Page 2 of 6 shown existing and

proposed floor plans – both with a Board date ‘received’ stamp of February 9, 2016

2. The setback to the front property line off Harrington Street shall be no less than 21.9’ [existing setback]. The front setback is proposed at 22’ [see plans].

3. The “Site Plan Proposed Renovations” shall be revised to reflect the proposed deck being reduced in size to comply with the 20% lot coverage by structures and to show location of drywells to be installed on said property. The revised ‘Site Plan’ shall be submitted to the Board for approval prior to the issuance of a building permit.

4. Final sign-off of construction or Occupancy for the proposed four-bedroom dwelling shall not be issued until the subject property has been connected to the Town sewer. Verification of connection shall be submitted to the Board of Appeals prior to final sign-off of the building permit and before Occupancy Certificate being issued.

5. There shall be no more than four (4) bedrooms on subject property after connection to the Town sewer.

6. The shed shall be removed from subject property and not replaced. In the event the applicant desires to re-locate a shed on subject property, application shall be made to the Board of Appeals for approval of said shed.

7. In the event the applicant has a three-season room constructed in place of the screen porch, there shall be no heat installed in the three-season room; and there shall be no creation of a bedroom or sleeping accommodations in said room.

8. The applicant shall submit ‘as-built’ plans post construction [includes decks, porches, steps and any appurtenance] to insure that lot coverage is maintained at or less than 20%, that the front yard setback is no less than 21.9’ and that the shed is removed from subject property.

9. 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.

10. 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.)

11. 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: 20-16

Applicant: CONSTANCE J. DOTY of Jamaica Plain, MA

Subject Property: 65 Harrington Street, Teaticket, MA
Map 39A, Section 12, Parcel 000, Lot 023

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 020-16 / Doty / Filed w/Town Clerk 3/21/16