

Zoning Board of Appeals Decisions Decisions for: 11-03-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 096-16

APPLICANT/OWNER(S): CHARLES ANTHONY DICECCA, TRUSTEE of DiCecca Realty Trust of Somerville, MA

SUBJECT PROPERTY: 18 Gunning Point Avenue, West Falmouth, Massachusetts
Assessor's Map: Map 37, Section 09, Parcel 006, Lot 057

DEED/CERTIFICATE: Book 25095 / Page 213

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of September 6, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-69 E. and 240-23 G. of the Code of Falmouth to construct a below grade two-car garage, construct additional habitable space above and increase lot coverage on subject property known as 18 Gunning Point Avenue, West 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 November 3, 2016.
4. The public hearing was terminated on November 3, 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 Robert H. Ament of 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

10/21/2016 Attorney Ament submitted to the file, thirteen (13) letters in support signed by abutters and neighbors.

10/31/2016 Letter submitted to the file from Katey Taylor Executive Director of 'Salt Pond Areas Bird Sanctuaries, Inc.' dated October 26, 2016 that states no objection to the application by DiCecca.

11/3/2016 Letter submitted to the file by Attorney Geoffrey S. Nickerson dated November 3, 2016 on behalf of Raymond and Elizabeth Hazell of 17 Langely Road stating concerns with proposed application by DiCecca.

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

09/06/2016 Attorney Ament, on behalf of the applicant [DiCecca] submitted a letter dated September 6, 2016 along with an application, fee, copies of site and architectural plans, and neighborhood lot calculations in support of the request for a special permit; letter of September 6, 2016 was corrected in

first paragraph and resubmitted on 11/2/2016.

9/23/2016 ZBA staff submitted to the file a copy of the Board Administrative Approval letter dated September 23, 2016 for a Board's approval heard on 9/6/2016 wherein the Board determined a height increase of the dwelling on subject property to be de minimus.

10/21/2016 Attorney Ament submitted letters of support (noted herein)

Letters/Referrals/E-mails from Town Departments

09/07/2016 Referral submitted to the file from the Planning Department staff with no comment

09/09/2016 Referral with attached comments submitted to the file from the Engineering Department (S. Schluter) – The attachment from Engineering requested the Board to condition abandonment of driveway, removal of a retaining wall and cobbles from right of way; driveway permit requirement; removal of vegetation in the island in the right of way and revised plans for a driveway that is conforming – Note: the applicant is not proposing any changes to driveways or retaining wall located off front of property in roadway that has existed more than 20 years – see findings.

09/09/2016 Referral submitted to the file from Conservation Commission that states: control runoff/stormwater on the property.

09/13/2016 Referral submitted to the file from the Director of Assessing with no comment

09/20/2016 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

Plans submitted by Applicant/Applicant's Representative

"Plan of Proposed Sewage Disposal System" prepared for DiCecca Realty Trust for Lot 57, #18 Gunning Point Avenue in Falmouth, MA – Sheet 1 of 2 drawn by Holmes and McGrath, Inc. dated August 2, 2016, stamped and signed by Timothy M. Santos, PE and stamped and signed by Joel R. Kubick, PLS – plan with a Board date 'received' stamp of September 6, 2016;

"Construction Details of Proposed Sewage Disposal System" prepared for DiCecca Realty Trust for Lot 57, #18 Gunning Point Avenue in Falmouth, MA – Sheet 2 of 2 drawn by Holmes and McGrath, Inc. dated August 2, 2016, stamped and signed by Timothy M. Santos, PE and with a Board date 'received' stamp of September 6, 2016; and

"New Addition to the Residence of: DiCecca Realty Trust 18 Gunning Point Avenue Falmouth, MA 02540, drawn by DHS Designs, Inc. consisting of Drawing A1 through A6 – all dated July 26, 2016 – Drawings consist of elevations and floor plans – all with a Board date 'received' stamp of September 6, 2016.

Hearing:

Attorney Ament informed the Board that the applicant has owned the subject property since 1987 and the existing dwelling was constructed in 1985. He then reviewed the existing site and proposed plans. He explained that the applicant is proposing a two-car garage at the lower level of the existing dwelling with habitable space above. He reviewed the existing lot coverage of 22.2% was conforming when the dwelling was constructed [changed from 35% to 20% in 2002 through Town Meeting vote]; and that the proposed addition will increase lot coverage to 24.3% which may be approved by the Zoning Board of Appeals through a special permit. The height of the existing dwelling's ridgeline is 35', the proposed addition will have a lesser height of 30'.

The Board discussed plans with Attorney Ament who clarified that the basement is currently used as a work shop, laundry area and recreation room – the use will not change; bedroom count existing is six bedrooms and will remain six bedrooms through this special permit; shed at rear of property will be removed as shown on the plan; and the existing one-car garage located on the northwesterly portion of the house is used as storage and will remain.

It was noted that the referral from the Engineering Department requested the existing retaining wall located at the front of the property in the roadway be removed, bushes between two of the driveways to

be cleared and abandonment of one of the three existing driveways. Attorney Ament stated that the applicant is not amenable to this request, that it is not the purview of the Board of Appeals and that the retaining wall that has been in existence for many, many years is believed to have been created to resolve drainage issues on the roadway.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Raymond and Elizabeth Hazell of 17 Langley Road stated they have been residents for six years and they have concerns with the addition as their back deck is 25' from the addition and they have an outdoor shower which they feel will be compromised through the addition.

Board discussed the application.

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 18 Gunning Point Avenue in West Falmouth contains 13,055 approximate square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C., 240-69 E. and 240-23 G. (1) of the Code of Falmouth to construct a below grade two-car garage, creating habitable space above and increasing the existing nonconforming lot coverage on subject property. The structure has a nonconforming setback at the northwesterly property line of 4.4' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The existing dwelling currently has a one-car garage on the northwesterly portion of the dwelling and a two-car garage is being proposed on the opposite side of the dwelling with living space above that will create a family room open to existing kitchen/dining area. On the second level above the addition will be an area with a circular stairway to access a deck on that level. The lot coverage by structures on subject property is existing at 22.2% which was conforming until 2002 when Town voted to decrease lot coverage from 35% to 20%; however a bylaw was created to allow lot coverage by structures up to 25% with approval from the Zoning Board of Appeals through a special permit. Through the addition proposed, lot coverage by structures will be increased to 24.3%. The plan also shows a shed being removed at the rear of the property. The net increase in the footprint would be approximately 274 square feet.

The Board discussed the request/recommendation from the Engineering Department as written on their referral to the file for subject property. Testimony by the applicant's representative was that the retaining wall at the front of subject property in the roadway has existed for many, many years and is believed to be created along with the town to resolve a drainage issue. The three entrances on subject property for a circular drive and independent driveway have existed for several years and was not discussed as a condition by the Board.

Section 240-23 G. (1) of the Code of Falmouth allows the Board of Appeals to approve garage space for more than two cars if the garage space is more than 900 square feet or if lot is less than 30,000 square feet in size.

The Board finds that the proposed two-car garage is approximately 726 square feet in size and the existing one-car garage, used for storage, is approximately 240 square feet in size – thus total is over 900 square feet; and that the subject property consists of less than 30,000 square feet of land. The Board further finds based on the above, the application meets the criteria to be before the Board for approval for the additional two-car garage on subject property.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to approve an increase of lot coverage exceeding the 20% maximum allowed in this residential district, not to exceed 25%, after consideration by the Board of the average size and height of the proposed compared with the existing in surrounding neighborhood, any overshadowing the proposed will create on adjacent property, any impact on a view or vista from a public roadway or any impact on a coastal embayment by nitrogen.

The Board finds that the subject property exists currently with nonconforming lot coverage of 22.2% as the Zoning Bylaw underwent a change in 2002 from 35% allowed maximum lot coverage by structures to 20% maximum which made the lot coverage on subject property nonconforming.

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 construction of a two-car garage with living space above added to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed addition will not increase the existing nonconforming setback; the proposed addition will not create any new nonconforming setback; and the proposed addition will increase the nonconforming lot coverage by structures from 22.2% to 24.3% which has been reviewed herein by the Board and approved. Furthermore, the Board finds that the proposed addition is a modest increase of 274 square feet to the existing footprint.

The Board finds through testimony by the abutter that they have a concern of the proposed addition overshadowing their property and the Board's consensus is that the existing dwelling is 35' in height and the proposed addition will be 30' in height; the addition will be 18' at its closest point to the abutter's property whereas the existing dwelling is 11.9' from abutter's property and therefore the addition will not impact any existing alleged overshadowing onto property known as 17 Langley Road as the addition will be at least 6' or more further away from property line than existing dwelling.

Testimony by the applicant's representative was that there is a proposal to the Board of Health for upgrade of the existing septic system; submitted plans (Sheet 2 of 2 "Construction Details" shows a flow of 660 GPD for a six (6) bedroom capacity).

The Board finds through testimony by the applicant's representative and by the "Plan" submitted that the shed in the rear of the property will be removed from the site and not replaced or relocated.

In addition to the above findings, the Board finds that the proposed addition of a two-car garage with living space above 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 it will not increase the existing nonconforming setback; it will not create any new nonconforming setback; and the lot coverage by structures being increased to 24.3% is allowed herein under Section 240-69 E. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and will be continued to be used as a single-family dwelling through this application.
- 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(s) 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; and there is no impact on any view or vista from the roadway or abutting properties.
- E. Testimony by the applicant's representative and submitted plan - Sheet 2 of 2 "Construction Details" show an upgrade to the septic system for a 6-bedroom dwelling.
- 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 if required.
- 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 pre-existing nonconforming 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 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 Charles Anthony DiCecca, Trustee of DiCecca Realty Trust (herein referred to as Applicant) under Section(s) 240-3 C., 240-69 E. and 240-23 G. of the Code of Falmouth to construct a below grade two-car garage with habitable space above and increasing the nonconforming lot coverage on subject property known as 18 Gunning Point Avenue, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the addition of a two-car garage with habitable space above, removal of the existing shed at rear of property, all setbacks, height of addition, 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:

- "Plan of Proposed Sewage Disposal System" prepared for DiCecca Realty Trust for Lot 57, #18 Gunning Point Avenue in Falmouth, MA – Sheet 1 of 2 drawn by Holmes and McGrath, Inc. dated August 2, 2016, stamped and signed by Timothy M. Santos, PE and stamped and signed by Joel R. Kubick, PLS – plan with a Board date 'received' stamp of September 6, 2016;

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2. There shall be no more than six (6) bedrooms allowed on subject property.

3. The shed shall be removed from subject property prior to final inspection by the Building Department or the Zoning Administrator. The shed shall not be replaced or relocated onto subject 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: 096-16

Applicant: CHARLES ANTHONY DICECCA, TRUSTEE of DiCecca Realty Trust

Subject Property: 18 Gunning Point Avenue, West Falmouth, Massachusetts
Map 37, Section 09, Parcel 006, Lot 057

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 096-16 DiCecca, filed w/Town Clerk 11/14/16