

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: 098-16

APPLICANT/OWNER(S): ROBERT D. GOLDMAN & ANNE E. GOLDMAN of Chicago, IL

SUBJECT PROPERTY: 72 Gunning Point Avenue, West Falmouth, Massachusetts
Assessor's Map: Map 37, Section 07, Parcel 003, Lot 043B

DEED/CERTIFICATE: Book 08117 / Page 0293

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of September 19, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the existing 2nd floor creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 72 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, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Jerry Potamis (Associate) made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals. Member Foreman recused.
5. The applicant was represented at the hearing by Mark Reposa of RT Bowman, Inc. and Fred Giampietro, architect for the project, 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

10/24/2016 Letter of support dated October 20, 2016, submitted to the file by George Billings of 62 Gunning Point Avenue

10/24/2016 Letter of support submitted to the file by Michael Eder of 6 Elgin Avenue

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

9/19/2016 Applicant's representative, Mark Reposa of RT Bowman, Inc., submitted an application, fee and plans as a request for special permit

10/12/2016 E-mail response from applicant's representative regarding question from ZBA staff as to the basement and its use: The basement is currently unfinished. A small portion of it is to become a playroom (14' x 19').

10/20/2016 E-mail from applicant's representative regarding Engineering referral submitted to the file

Letters/Referrals/E-mails from Town Departments

9/19/2016 ZBA staff submitted a copy of the Decision for Special Permit #111-92 to allow the addition of a second floor to the pre-existing nonconforming dwelling discussed herein

9/20/2016 Referral from Planning Department staff submitted to the file with no comment

9/20/2016 Referral from Conservation Commission staff submitted to the file with the comment: Contain stormwater on property.

9/22/2016 Referral from Falmouth Fire Rescue Department submitted to the file with no comment

9/27/2016 Referral from Town Assessor submitted to the file with no comment

10/6/2016 Referral from Town Engineering Department submitted to the file with standard comments and a request to have applicant remove a hedge at the front of the property that the Engineering Department believes to be a hazard.

Plans submitted by Applicant/Applicant's Representative

"Plan of Existing Dwelling" prepared for Robert D. Goldman for Lot 43B, #72 Gunning Point Road in Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated August 25, 2016 with a revision date of 8/24/2016 and with a Board date 'received' stamp of September 19, 2016;

"Renovations & Additions to: The Goldman Residence 74 Gunning Point Road Falmouth, MA" (Note: address should be 72) drawn by Giampietro Architects, stamped and signed by Louis F. Giampietro, RA – consisting of: Drawing AB1 'Existing Elevations revision date of 8/17/16

Hearing:

Mark Reposa with RT Bowman, Inc. introduced Fred Giampietro, the architect for the project. Mr. Giampietro reviewed the plans that show an addition to the existing second floor to create a new bedroom with bath on the second floor. The existing bedroom count is three and will remain three bedrooms. The applicant will relocate an existing bedroom on the first floor to the second floor and open up the first floor space to increase an existing 'reading room' into a library that will have a 4.6' cased opening. The basement will have a play room created within it – no bedrooms. Mr. Giampietro reviewed the height of the proposed addition, which will be less than the existing second floor height.

The Board discussed plans with Mr. Reposa and Mr. Giampietro. 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 Hurrie 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 72 Gunning Point Avenue contains 12,638 square feet of Residential B zoned land that is not located within any overlay district. The subject property has a prior Special Permit, #111-92, that allowed the existing second floor space to be created. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the second floor creating a bedroom space relocated from the first floor. The existing single-family dwelling structure has a nonconforming setback of 23.7' to the front property line off Gunning Point Avenue that requires a 25'

setback pursuant to Section 240-68 A. of the Code of Falmouth and a nonconforming setback of 7.0' to the westerly side yard property line that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth. The existing single-family dwelling has three bedrooms and a reading room that is open to the hallway; through the proposed addition to the second floor the dwelling will remain a three bedroom dwelling with a library on the first floor open to the hallway and a proposed office that will be within the entrance area of the master bedroom on the second floor and have a 3' cased opening. It was noted during the hearing process that there were two letters of support from abutters submitted to the file.

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 to the existing second floor of subject pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the addition to the second floor space will not increase the existing footprint of the dwelling and therefore will not affect either of the nonconforming setbacks (front and side property lines); and there will be no increase to the lot coverage. Furthermore, the Board finds that the proposed addition to the second floor will be an enhancement to the living areas of the dwelling for the residents.

The Board finds that the existing dwelling is three bedrooms and through the changes to the dwelling discussed herein said dwelling will remain a three-bedroom dwelling. The Board further finds that the applicant representatives, through testimony, identified and agree with the cased opening to the library proposed on the first floor and the office space proposed on the second floor within the master bedroom area.

The Board finds through testimony by the applicant's representative that the hedge at the front of the property will be cut back no less than twelve inches (12") based on a referral submitted to the file from the Engineering Department who believes that the hedge extends into the site distance along Gunning Point Avenue making it a detriment. The Board further finds that the subject property will remain in keeping with the integrity of the neighborhood character through the proposed addition to the second floor.

In addition to the above findings, the Board finds that the proposed addition to the existing second floor of subject 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 second floor addition as it does not increase the existing footprint and thereby will not increase the two nonconforming setbacks (front and side property lines); and there will be no increase to the lot coverage.
- B. The site is suitable for the proposed addition as the property is zoned residential and will continue to be used as a three-bedroom 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 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 as the hedge at the front of the property will be trimmed back and the addition to the second floor will not have any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved; and there is no impact on any view or vista from the roadway or abutting properties.
- E. According to applicant's representation there is a sewage disposal system in place for a three-bedroom dwelling and the plans approved herein will be reviewed by the Board of Health prior to issuance of a building permit.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition to the second floor of the dwelling as 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 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 Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion. Motion carried 5 – 0.

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 Robert D. & Anne E. Goldman (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the existing second floor for additional habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 72 Gunning Point Avenue, West Falmouth, MA. This special permit is subject to the following conditions:

1. The construction of the addition to the second floor, all setbacks, lot coverage, floor plan, elevation 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 Existing Dwelling" prepared for Robert D. Goldman for Lot 43B, #72 Gunning Point Road in Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated August 25, 2016 with a revision date of 8/24/2016 and with a Board date 'received' stamp of September 19, 2016;

- "Renovations & Additions to: The Goldman Residence 74 Gunning Point Road Falmouth, MA" (Note: address should be 72) drawn by Giampietro Architects, stamped and signed by Louis F. Giampietro, RA – consisting of: Drawing AB1 'Existing Elevations revision date of 8/17/16

2. There shall be no more than three (3) bedrooms allowed on subject property. In the event the Board of Health approves a four-bedroom septic system, the applicant will submit verification of said approval and a plan showing a fourth bedroom within the existing plans approved herein. There shall be no bedroom or sleeping accommodations created within the basement space on subject property.

3. The applicant shall maintain the cased opening to the library on the first floor shown to be 4.6' and the 3' cased opening to the 'office' area shown on the second floor within the master bedrooms space (see Drawing A2 – Renovated First and Second Floor Plans).

4. The applicant shall be responsible to cut back the hedge at the front of the property no less than twelve inches (12") as testified to during the hearing process and based on the referral from the Engineering Department.

5. 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.

6. The Applicant shall meet the requirements of the DPW Water Division.

7. 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.)

8. 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: 098-16

Applicant: ROBERT D. GOLDMAN & ANNE E. GOLDMAN of Chicago, IL

Subject Property: 72 Gunning Point Avenue, West Falmouth, Massachusetts
Map 37, Section 07, Parcel 003, Lot 043B

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 098-16 Goldman, filed w/Town Clerk 11/14/16