

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 127-16

APPLICANT/OWNER: JOSEPHINE B. GREENE, TRUSTEE of 55 Millfield Street Realty Trust of Newton, MA

SUBJECT PROPERTY: 55 Millfield Street, Woods Hole, MA
Assessor's Map: Map 49A, Section 04, Parcel 049, Lot 000J

DEED/CERTIFICATE: Book 23304 / Page 193

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 14, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-68 A., 240-68 B., 240-68 D. and 240-3 C. of the Code of Falmouth to construct an addition to the second floor and a new deck while renovating the pre-existing nonconforming single-family dwelling on subject property known as 55 Millfield Street, Woods Hole, 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 scheduled to be opened on February 9, 2017, but due to inclement weather the hearing was re-scheduled to February 16, 2017 on which date the hearing was opened.
4. The public hearing was terminated on February 16, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Robert Dugan (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 Michael McGrath, P.E. with Holmes and McGrath, Inc., 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)

12/14/2016 Holmes and McGrath, Inc. submitted, on behalf of the applicant, an application, letter of authorization, fee, four copies of “Plan” (plot plan) and architectural plans and ‘Neighborhood Bulk Coverage Analysis for Millfield Street, Woods Hole, MA’

Letters/Referrals/E-mails from Town Departments

12/15/2016 Referral submitted to the file from the Director of Assessing with no comment

12/16/2016 Referral submitted to the file from the Planning Department staff with no comment

12/16/2016 Referral submitted to the file from the Conservation Commission that states: *Notice of Intent has been filed w/ConCom. Hearing scheduled for 1/4/2017. Note: Order of Conditions and permit issued by Conservation Commission submitted to the file on February 2, 2017.*

12/16/2016 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment

01/04/2017 Referral submitted to the file from the Town Engineering Department (Scott Schluter) that states: *This application was reviewed only for impacts to public right of ways and public utilities. Millfield St. is a Public right of way in 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.*

Plans submitted by Applicant/Applicant’s Representative

“Plan of Proposed Building Addition” prepared for 55 Millfield Street Realty Trust for Lot J, #55 Millfield Street in Woods Hole, MA as drawn by Holmes and McGrath, Inc., Sheet 1 of 1, stamped and signed by Michael B. McGrath PLS and Michael B. McGrath, PE – plan dated December 8, 2016 and with a Board date ‘received’ stamp of December 14, 2016; and

“Greene-Asch Remodel 55 Millfield Street” drawn by Jill Neubauer Architects consisting of Drawing A000 ‘Cover Sheet’ dated 12/8/2016, Drawing A002 ‘Bulk Context Plan’ dated 12/8/2016, Drawing A010 ‘Existing Basement Plan’ dated 12/8/2016, Drawing A011 ‘Existing Floor Plans’ dated 12/8/2016, Drawing A020 ‘Existing Exterior Elevations’ dated 12/8/2016, Drawing A100 ‘Basement Plan’ dated 12/8/2016, Drawing A101 ‘Floor Plans’ dated 12/8/2016 and Drawing A200 ‘Exterior Elevations’ dated 12/8/2016 – all with a Board date ‘received’ stamp of December 14, 2016.

Hearing:

Michael McGrath, P.E. reviewed the existing site and proposed addition. He noted the pre-existing nonconforming setback of 5.3’ from the structure to the front property line that requires a 25’ setback

and the nonconforming setback at from the dwelling to the westerly side yard property line of 6.6' that requires a 10' setback. The existing shed, sitting currently over the east side property line, along with the trash bins will be removed and not replaced on subject property – thereby eliminating a nonconforming setback. He further noted that a portion of the rear deck, approximately 45 square feet will be removed so the proposed addition to the existing deck on the east side of the dwelling will not increase lot coverage by structures and together with the removal of the shed and trash bins the existing nonconforming lot coverage by structures of 24.5% will be decreased to 23.7%. The applicant is also proposing an addition to the second floor that will be above the existing den/sitting area on the first floor. The second floor addition will create a sitting room for the existing master bedroom. The proposed addition to the existing deck will be in compliance with required setback. There will be no additional bedrooms created through the proposed. The property is on Town sewer.

The Board discussed proposed plans with Mr. McGrath and asked for review of the bulk calculations he submitted to the file. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There were no comments.

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 55 Millfield Street in Woods Hole contains 4,700 square feet of Residential C zoned land that is not located within overlay district. The applicant applied under Section 240- 3 C. of the Code of Falmouth as there are pre-existing nonconforming setbacks on subject property as follows: 1) Applicant applied under Section(s) 240-68 A. and 240-68 B. of the Code of Falmouth as the existing single-family dwelling has a nonconforming front yard setback of 5.3' that requires a 25' setback under Section 240-68 A.; a nonconforming setback of 6.6' at the west side yard property that requires a 10' setback under Section 240-68 B.; and the existing shed (noted on plan to be removed) encroaches over the east property line where a setback of 3' is required under Building Regulations.

2) The applicant also applied for relief under Section 240-68 D. of the Code of Falmouth as the existing structure has a setback of 32' to the 3' (NGVD) contour line off the waters of Mill Pond that requires a 50' setback pursuant to said section. The applicant is proposing to construct an addition to the existing second floor over the den/sitting area that exists on first floor, add to the existing deck on the east side of the dwelling, remove a portion of the existing deck on the rear corner of the dwelling and to remove the existing nonconforming shed and trash bins on the east side of property. The addition to the second floor will create a sitting room for the existing master bedroom; and the addition to the deck on the east side of the dwelling will add to the enhancement of windows/doors leading from the first floor sitting room to existing deck. The addition to the deck will be in compliance with the setback requirements; and the removal of the shed and a portion of the rear deck will improve the nonconforming lot coverage of 24.5% to 23.7%. The removal of the shed will eliminate one nonconforming setback. The nonconforming setback to the waters of Mill Pond will be unchanged.

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 change to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board finds that the proposed additions to the dwelling will not create any new nonconformities, but in fact eliminates one nonconforming setback and slightly improves the nonconforming lot coverage by structures. The Board further finds that the proposed additions will enhance the utilization of the dwelling by its inhabitants.

The Board finds that there is no additional bedrooms created and the total of bedrooms will remain as three on subject property. The Board further finds that the subject property is on Town sewer.

In addition to the above findings, the Board finds that the proposed additions to the existing dwelling and the removal of a portion of an existing deck and shed and trash bins 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 addition to second floor and addition to existing deck as there will be no new nonconforming setbacks and there will be a slight improvement to the nonconforming lot coverage by structures.

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 residence through this special permit.

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 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. The subject property is on Town sewer.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed additions to the dwelling and site changes 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 additions and site improvements 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 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 Josephine B. Greene, Trustee of 55 Millfield Street Realty Trust (herein referred to as Applicant) under Section(s) 240-3 C., 240-68 A., 240-68 B. and 240-68 D. of the Code of Falmouth to allow additions as noted herein to the pre-existing nonconforming single-family dwelling on subject property known as 55 Millfield Street, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

1. The second floor addition, deck addition, removal of a portion of rear deck, removal of shed and trash bins, all setbacks, lot coverage by structures 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 Building Addition” prepared for 55 Millfield Street Realty Trust for Lot J, #55 Millfield Street in Woods Hole, MA as drawn by Holmes and McGrath, Inc., Sheet 1 of 1, stamped and signed by Michael B. McGrath PLS and Michael B. McGrath, PE – plan dated December 8, 2016 and with a Board date ‘received’ stamp of December 14, 2016; and
 - “Greene-Asch Remodel 55 Millfield Street” drawn by Jill Neubauer Architects consisting of Drawing A000 ‘Cover Sheet’ dated 12/8/2016, Drawing A002 ‘Bulk Context Plan’ dated 12/8/2016, Drawing A010 ‘Existing Basement Plan’ dated 12/8/2016, Drawing A011 ‘Existing Floor Plans’ dated 12/8/2016, Drawing A020 ‘Existing Exterior Elevations’ dated 12/8/2016, Drawing A100 ‘Basement Plan’ dated 12/8/2016, Drawing A101 ‘Floor Plans’ dated 12/8/2016 and Drawing A200 ‘Exterior Elevations’ dated 12/8/2016 – all with a Board date ‘received’ stamp of December 14, 2016.
2. The shed and the trash bins shall be removed from the subject property and not replaced or relocated on subject property.
3. 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.
4. 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.)
5. 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: **127-16**

Applicant: **JOSEPHINE B. GREENE, TRUSTEE of 55 Millfield Street
Realty Trust of Newton, MA**

Subject Property: **55 Millfield Street, Woods Hole, Massachusetts
Map 49A, Section 04, Parcel 049, Lot 000J**

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.