

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 001-17
APPLICANT/OWNER: ROBERT L. SPIRO and NANCY A. SPIRO of East Falmouth, MA
SUBJECT PROPERTY: 326 Maravista Ave., Teaticket, Massachusetts
Assessor's Map: Map 46A, Section 17, Parcel 000, Lot 120
DEED/CERTIFICATE: Book 9499 / Page 76
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 10, 2017, 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 increase existing kitchen area and add a new bedroom within the pre-existing nonconforming single-family dwelling on subject property known as 326 Maravista Avenue, Teaticket, 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 February 23, 2017.
4. The public hearing was terminated on February 23, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting members) 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 present at the hearing and 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

01/10/2017 Letter submitted to the Board of Appeals in support of this application signed by three individuals: John McDermott of 324 Maravista Ave, Mary Fetzer of 24 Hamilton St and Lucy Young of 23 Hamilton St.

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

None

Letters/Referrals/E-mails from Town Departments

- 01/12/2017 Referral submitted to the file from the Director of Assessing that notes subject property consists of Lots 120 and 557.
- 01/12/2017 Referral submitted to the file from Planning Department staff with no comment
- 01/13/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 01/18/2017 Referral submitted to the file from Board of Health Agent that notes property is on Town sewer.
- 02/07/2017 Referral submitted to the file from Conservation Commission states: *Located within flood zone A (AE12). File Administrative Review: Driveway runoff/stormwater must be contained on property.*
- 02/13/2017 Referral submitted to the file from Engineering Department states: *This application was reviewed only for impacts to public right of ways and public utilities. Maravista Ave and Hamilton Street are both Public right of ways in this area. It appears that a new driveway is proposed to the southwest of the existing home; this will require filing for 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 increase of roof area.*

Plans submitted by Applicant/Applicant's Representative

“Site Plan for Robert Spiro 326 Maravista Avenue Teaticket Falmouth, Mass” as drawn by Warwick & Associates Inc. dated 12/17/2015 with a revised date of 10/12/2016 – plan is stamped and signed and dated by Gary S. Labrie, PLS on 10/25/2016 – with a Board date ‘received’ stamp of January 10, 2017; and

“Renovations to: Spiro Residence 326 Maravista Avenue Falmouth, MA” as drawn by Giampietro Architects consisting of Sheet No. AB1 ‘As-built Plans and Elevations’ dated 1/20/2016 and Sheet No. A1 ‘Elevations & Plans’ dated 6/07/2016 with a final revision date of 10/28/2016 and both with a Board date ‘received’ stamp of January 10, 2017.

Hearing:

Mr. Spiro explained that the lot is very small (3,600 sf) and they would like to make the existing one-bedroom dwelling, approximately 560 square feet in size, into a two-bedroom dwelling (adding approximately 200 square feet). We are improving our kitchen, increasing the existing bathroom and there are two sheds on the property; we will remove the larger shed and relocate the smaller shed slightly to the east. He said he spoke with the Engineering Department and they explained that a driveway permit will be reviewed and approved when the building permit is applied for. He further explained that he has not had any issues with runoff and that any runoff will be maintained on site.

The Board discussed plans with Mr. Spiro. 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 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 326 Maravista Avenue in Teaticket contains 3600 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to increase existing kitchen, increase existing bathroom area and add a new bedroom within the pre-existing nonconforming single-family dwelling on subject property. The dwelling structure has a nonconforming setback of 19.5' to the front property line off Maravista Avenue and a 5.7' setback to the front property line off Hamilton Street – both require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; the structure has a nonconforming setback of 4.3' to the northerly property line that requires a setback of 10' pursuant to Section 240-68 B. of the Code of Falmouth; both sheds have a nonconforming setback of 1.7' or less to the northerly property line that requires a 10' setback; and lot coverage by structures is nonconforming as structures exceed the 20% maximum by right in this residential zoned district pursuant to Section 240-69 A. of the Code of Falmouth.

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 addition to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the existing one-bedroom, one-story 560 square foot (approximately) with an addition of 200 square feet (approximately) making it a two-bedroom, one-story dwelling on the 3,600 square foot lot will be a modest addition that will improve and enhance the utilization of the pre-existing nonconforming dwelling. Furthermore, the Board finds that the existing nonconforming setbacks from the dwelling structure will not be increased and will remain the same; the nonconforming setback of the sheds will be eliminated as the large shed will be completely removed from the site and the smaller shed will be relocated slightly to the east with a conforming setback; and the lot coverage by structures being increased from 21.75% to 24.61% is appropriate for this sized lot and modest addition and meets the criteria of Section 240-69 E. of the Code of Falmouth.

The Board finds that the dwelling has a crawl space and that there will be no basement addition through this special permit approval. The Board further finds that the height of the structure – 15.6' height – will remain the same and not be increased.

The Board finds through testimony that the applicant has communicated with the Engineering Department regarding relocation of the driveway for subject property and that it will be reviewed and approved prior to issuance of a building permit. The Board further finds that although the total lot coverage is in compliance with Section 240-69 A. (40% maximum), the total lot coverage [structures, parking and paving] will decrease from 30.31% to 27.78% as the driveway area will be decreased and considered an improvement herein.

The Board finds through testimony by the applicant that there has been no issue with stormwater runoff into public ways and that all runoff will be maintained on site.

The Board finds that the subject property is on Town Sewer.

In addition to the above findings, the Board finds that the proposed addition 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 is a modest addition to better utilize the dwelling, it will not increase any nonconforming setback existing, there will be improvement to shed setback and lot coverage by structures will not create any impact to the abutters or neighborhood in general.

B. The site is suitable for the proposed use as the property is zoned residential and the existing dwelling will continue to be used as a single-family dwelling.

C. There will be no impact on traffic flow and safety due to the one-bedroom dwelling becoming a two-bedroom dwelling. The driveway will be relocated on subject property pursuant to application with the Town Engineering Department prior to issuance of a building permit.

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 subject property is on Town sewer.

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 as there was no referral submitted to the file from the Water Department.

G. The proposed addition 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.

The Board of Appeals has weighed the effects of the proposed addition to the existing dwelling 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 Foreman 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 Robert L. and Nancy A. Spiro (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to increase existing kitchen, increase existing bathroom area and add a new bedroom within the pre-existing nonconforming single-family dwelling on subject property known as 326 Maravista Avenue, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The removal of the existing large shed, relocation of the small shed, addition to the dwelling, relocation of driveway 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:
 - "Site Plan for Robert Spiro 326 Maravista Avenue Teaticket Falmouth, Mass" as drawn by Warwick & Associates Inc. dated 12/17/2015 with a revised date of 10/12/2016 – plan is stamped

and signed and dated by Gary S. Labrie, PLS on 10/25/2016 – with a Board date ‘received’ stamp of January 10, 2017; and

- “Renovations to: Spiro Residence 326 Maravista Avenue Falmouth, MA” as drawn by Giampietro Architects consisting of Sheet No. AB1 ‘As-built Plans and Elevations’ dated 1/20/2016 and Sheet No. A1 ‘Elevations & Plans’ dated 6/07/2016 with a final revision date of 10/28/2016 and both with a Board date ‘received’ stamp of January 10, 2017.
2. The applicant shall file with the Engineering Department for a driveway permit and receive approval prior to construction on site.
 3. The applicant shall maintain all stormwater on 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: **001-17**

Applicant: **ROBERT L. SPIRO and NANCY A. SPIRO of East Falmouth, MA**

Subject Property: **326 Maravista Avenue, Teaticket, Massachusetts
Map 46A, Section 17, Parcel 000, Lot 120**

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

RECEIVED

MAR - 6 2017

FALMOUTH TOWN CLERK

AP @ 12:15 pm

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.