

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 010-17

APPLICANT/OWNER: PETER R. FENN, TRUSTEE of WLJ NOMINEE TRUST
of Westwood, MA

SUBJECT PROPERTY: 35 Church Street, Woods Hole, Massachusetts
Assessor's Map: Map 51, Section 01, Parcel 005, Lot 003

DEED/CERTIFICATE: Book 27398 / Page 130

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 7, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to receive Town acknowledgement of two legally pre-existing nonconforming dwellings on property and to construct an addition to the pre-existing nonconforming single-family dwelling (previously known as the carriage house) to create an indoor squash court on subject property known as 35 Church Street, Woods Hole, 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 9, 2017.
4. The public hearing was terminated on March 9, 2017, 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

None

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

02/02/2017 Attorney Moynihan submitted to the file, along with the application, plans, fee and authorization a packet of information that gives history of the property, proof of more than one dwelling on subject property prior to 5/19/1959 and a written determination by the Building Commissioner that said dwellings did exist and were used prior to and since 1959 (several letters from people who were familiar with the property, old Assessors' cards, photos, etc.) and confirmation as to continued use of the dwellings

Letters/Referrals/E-mails from Town Departments

02/07/2017 Referral submitted to the file from the Conservation Commission that states: *Outside ConComm jurisdiction.*

02/07/2017 Referral submitted to the file from Planning Department staff with no comment

02/07/2017 Referral submitted to the file from staff in Historical Commission that states: *This is scheduled on the Historic Commission Agenda for 2/7/17.*

02/09/2017 Referral submitted to the file from Director of Assessing with no comment

02/14/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

02/27/2017 Referral submitted to the file from the Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Church Street 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. We recommend adding dry wells, rain garden, or other stormwater measure for addition's roof.*

02/14/2017 ZBA staff requested a copy of the Certificate of Appropriateness approval from Historical Commission and submitted it to the file.

Plans submitted by Applicant/Applicant's Representative

“Plan of Proposed Addition” prepared for WLJ Nominee Trust for #35 Church Street in Woods Hole, MA – Sheet 1 of 2 as drawn by Holmes and McGrath, Inc. dated Jan. 18, 2017 with a final revision date of 3/6/18 – stamped and signed by Michael B. McGrath, P.E. and Michael B. McGrath, P.L.S. and with a Board date ‘received’ stamp of March 8, 2017;

“Construction Details of Proposed Septic Lift Station” prepared for WLJ Nominee Trust for #35 Church Street in Woods Hole, MA – Sheet 2 of 2 as drawn by Holmes and

McGrath, Inc. dated Jan. 18, 2017 – stamped and signed by Michael B. McGrath, P.E. and with a Board date ‘received’ stamp of March 8, 2017; and “Proposed Plan 35 (43) Church Street Woods Hole” architectural plans drawn by Jessica Romualoisnare, Registered Architect consisting of 8 pages dated December 22, 2016 stamped and signed by Jessica Romualoisnare showing proposed floor plan, elevations, existing cottage plans and existing elevations – all with a Board date ‘received’ stamp of February 7, 2017.

Hearing:

Attorney Laura Moynihan spoke on behalf of the applicant and reviewed the existing site that consists of 1.79 acres that has two existing dwellings (previously part of a larger lot that was subdivided in 2012 into 3 lots). She reviewed the history of the property that was once known as the Whitney Estate and noted that the two dwelling structures existing predate 1920. She reviewed the information she had submitted to the file wherein the Building Commissioner in 2012 agreed that the dwelling structures (known as the guest house and the carriage house with garage) on the property did exist prior to May 19, 1959 [Section 240-3 A. of the Code of Falmouth] and the affidavits from former caretakers, neighbors and others that state the dwellings [and their use] did exist prior to May 19, 1959. Attorney Moynihan noted that the two dwellings renders the lot nonconforming in this Residential zoned district where one dwelling is allowed by right. She then explained the existing nonconforming setback of the subject dwelling that is 8’ from the front property line off Church Street that requires a 25’ setback. The proposed squash court structure (1,373 sf) will be in compliance with the required ten foot (10’) set back from the northerly side yard property line and lot coverage by structures will remain below the 20% maximum allowed according to Town Code. The proposed squash court will be only partially visible from the roadway. Attorney Moynihan reviewed the revised plan noting the addition of drywells to the site based on the referral from the town Engineering Department. The plan has been approved by the Historic Commission with a copy of the ‘Certificate of Appropriateness’ submitted to the file.

The Board discussed proposed plans with Attorney Moynihan and proposed landscaping to the north of the proposed structure. 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 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 35 Church Street contains 1.97 acres of Residential AA zoned land that is located (front portion of lot) within the Historic District. The applicant applied under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth. Under Section 240-3 A. the applicant is requesting the

Town to acknowledge that both dwellings on subject property existed prior to May 19, 1959; and Section 240-3 C. that requires a pre-existing nonconforming structure and use seek a special permit from the Board of Appeals to extend, alter or change said structure or use.

Section 240-3 A. of the Code of Falmouth requires that the use of two or more dwellings on a single lot is deemed a pre-existing nonconforming use if commenced prior to May 19, 1959 and may be altered or modified by special permit provided that the Board of Appeals finds that a preponderance of credible evidence has been provided showing that the use commenced prior to May 19, 1959 and had not been abandoned or unused for a period of two years or more.

The Board finds that Attorney Moynihan submitted a preponderance of credible evidence that both dwellings existed prior to May 19, 1959 by way of Town records (old Assessors' cards) indicating that the main dwelling on subject property was created circa 1874 and the garage with living quarters above was created approximately in 1918; excerpt from "The Book of Falmouth" noting a travel through Woods Hole in 1927 and visiting the subject property (previously 9 acre site with dwelling, carriage house, and cottages); a letter dated October 18, 2011 from Joan Wickersham of 158 Church Street who had been a resident prior to 1959 [to present] describing the subject property with the two dwellings; a letter from Vincent Greene of Naples Florida dated September 12, 2011 who was a caretaker of subject property and noted previous caretakers, he described the property with the carriage house (garage with living quarters) that was used by Whitney family or guests or rented to tenants and when WHOI purchased the carriage house was used as residence; a hand written letter from Alan Lunn who was caretaker of property in late forties and early fifties noted that he lived in the quarters above the garage and described main dwelling and other cottages on site (then 9 acre lot); and a letter from Building Commissioner Eladio Gore dated January 24, 2012 wherein he reviewed records and information submitted for a proposed ANR (subdividing the previous lot known as 43 Church Street) – specifically this 1.79 acre lot and determined the two structures on subject property are 'legal pre-existing nonconforming residential dwelling uses' according to Falmouth Zoning By-laws and M.G.L. Ch. 40A, Sec. 6. The Board of Appeals further finds in accordance with Section 240-3 A. of the Code of Falmouth that the use of the two dwellings commenced prior to May 19, 1959 and has not been abandoned or unused or discontinued for a period of two years or more.

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 of a structure to create an indoor squash court to the pre-existing nonconforming carriage-house dwelling on subject property will not be substantially more detrimental than what currently exists. The Board further finds that the proposed structure will be located 10' from the northerly side yard property line according to Section 240-68 B. of the Code of Falmouth and that lot coverage by structures remains well below the maximum percentage allowed pursuant to Section 240-69 A. of the Code of Falmouth. Furthermore, the Board finds that the proposed structure will not increase the existing nonconforming setback of 8' to the front property line off Church Street.

The Board finds that the applicant revised the plot plan showing the addition of drywells to the subject property to insure stormwater runoff is maintained on subject property.

The Board finds that the applicant is amenable to submitting a landscape plan for administrative approval by the Zoning Administrator showing appropriate landscaping to the northerly area of proposed structure. The Board further finds that the project architect (Ms. Romualoisnare) stated that the walls of the squash court are 12" thick walls so that noise generated by the proposed squash court should not be heard from outside the structure.

In addition to the above findings, the Board finds that the proposed structure addition to the existing carriage-house creating a squash court 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 squash court structure as the addition will be in compliance with setback requirements under Section 240-68 B. of the Code of Falmouth and that the existing nonconforming front yard setback will not be increased through this special permit approval.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed squash court structure is an acceptable accessory use to the residential use on subject property.
- 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 unchanged and there does not appear to be any impact on the neighborhood's visual character; and there will be no adverse impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will be unaffected by the proposed squash court structure; and there was no referral from the Board of Health noting any concerns with the proposed structure.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- 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 of a squash court structure 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 Peter R. Fenn, Trustee of WLJ Nominee Trust (herein referred to as Applicant) under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth acknowledging two legal pre-existing nonconforming dwellings on subject property and the addition of a squash court structure to the pre-

existing nonconforming carriage-house dwelling on subject property known as 35 Church Street, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

1. The location of the proposed squash court structure, all setbacks, lot coverage, height of structure and use of structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plan of Proposed Addition” prepared for WLJ Nominee Trust for #35 Church Street in Woods Hole, MA – Sheet 1 of 2 as drawn by Holmes and McGrath, Inc. dated Jan. 18, 2017 with a final revision date of 3/6/18 – stamped and signed by Michael B. McGrath, P.E. and Michael B. McGrath, P.L.S. and with a Board date ‘received’ stamp of March 8, 2017;
 - “Construction Details of Proposed Septic Lift Station” prepared for WLJ Nominee Trust for #35 Church Street in Woods Hole, MA – Sheet 2 of 2 as drawn by Holmes and McGrath, Inc. dated Jan. 18, 2017 – stamped and signed by Michael B. McGrath, P.E. and with a Board date ‘received’ stamp of March 8, 2017; and
 - “Proposed Plan 35 (43) Church Street Woods Hole” architectural plans drawn by Jessica Romualoisnare, Registered Architect consisting of 8 pages dated December 22, 2016 stamped and signed by Jessica Romualoisnare showing proposed floor plan, elevations, existing cottage plans and existing elevations – all with a Board date ‘received’ stamp of February 7, 2017.
2. The applicant shall submit, prior to issuance of a building permit, a Landscape Plan for administrative approval by the Zoning Administrator (noting landscape proposed for north side of proposed addition).
3. The applicant shall submit an ‘as-built’ verifying the setback of the squash court structure to be no closer than 10’ to the north side yard property line on subject property. The ‘as-built’ shall be submitted for approval to the Zoning Administrator prior to issuance of a final sign-off by the Building Department and/or Zoning Administrator.
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: **010-17**

Applicant: **PETER R. FENN, TRUSTEE of WLJ Nominee Trust of Westwood, MA**

Subject Property: **35 Church Street, Woods Hole, Massachusetts
Map 51, Section 01, Parcel 005, Lot 003**

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 17 2017

FALMOUTH TOWN CLERK

AD @ 840am
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.