

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 005-17

**APPLICANT/OWNER:** FOURTEEN MAKER LANE LLC of Charlotte, N.C.

**SUBJECT PROPERTY:** 14 Maker Lane, West Falmouth, Massachusetts  
**Assessor's Map:** Map 36, Section 05, Parcel 009, Lot 013

**DEED/CERTIFICATE:** Book 19738 / Page 200

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of January 19, 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 the second floor creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 14 Maker Lane, 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 March 16, 2017.
4. The public hearing was terminated on March 16, 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 Kevin P. Klauer, II with Ament Klauer LLP, 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**

- 03/14/2017 E-mail letter from Deborah Gove of 18 Maker Lane stating opposition to proposed addition – and confusion with plans submitted (attached plans approved in 2007 comparison with existing floor plans submitted)
- 03/14/2017 E-mail letter from Elizabeth Gardner of 10 Maker Lane stating opposition to increase in dwelling as proposed

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

- 02/24/2017 E-mail from Attorney Klauer informing the Board of Appeals that they filed an RDA request with Conservation Commission (noting referral from Conservation Commission dated 02/07/2017)
- 03/16/2017 Attorney Klauer submitted to the file at the hearing on this date a copy of the Request for Determination of Applicability filed with the Conservation Commission

### Letters/Referrals/E-mails from Town Departments

- 01/20/2017 Board of Appeals staff submitted previous Special Permit #66-07 for subject property that gave approval for construction of a foyer and second story addition. Decision was filed with the Barnstable Registry of Deeds on 12/17/2007
- 01/23/2017 Referral submitted to the file by the Director of Assessing with no comment
- 01/23/2017 Referral submitted to the file from Planning Department staff with no comment
- 01/26/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 02/07/2017 Referral submitted to the file from Conservation Commission Agent (Kasprzyk) that states: *Waiting for filing: spoke with Falmouth Engineering that an RDA could be appropriate: roof stormwater to dry wells, work by hand on street side.*
- 02/13/2017 Referral submitted to the file from Town Engineering Department (S. Schluter) that states: *This application was reviewed only for impacts to public right of ways and public utilities. Maker Lane is a Private right of way in this area. 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. Although there is no increase, we recommend adding dry wells, rain garden, or other stormwater measure for the roof due to the close proximity to several resource areas.*

*Note: Referrals sent to Water Dept., Building and Board of Health – no response*

- 02/14/2017 E-mail reply to Board of Appeals staff from Conservation Commission of no new filing to modify previous Decision in 2007 from Conservation Commission
- 03/08/2017 E-mail to Attorney Klauer from Zoning Administrator asking for clarification on what is in the existing basement and proposed use of existing basement as plans approved from 2007 are different than what is showing as existing in this application (#005-17)
- 03/08/2017 E-mail from Conservation Agent Kasprzyk to project engineer [Michael Borselli, PE] regarding confusion with the application and what Board of Health shows (3 bedrooms) vs. what is applied for to Conservation Commission and Zoning Board of Appeals

03/14/2017 E-mail to Board of Health Agent and Building Commissioner asking for verification of septic and permitted changes in subject dwelling since 2007 ZBA approval

**Plans submitted by Applicant/Applicant's Representative**

“Existing Conditions Plan for #14 Maker Lane” prepared for Liz & Brad Winer in Falmouth, MA as drawn by Falmouth Engineering, Inc. on Sheet 1 of 1 dated October 21, 2017 with a final revision date of 2/21/2017 and with a Board date ‘received’ stamp of March 7, 2017;

“Renovations and Addition to: Winer Residence 14 Maker Lane Falmouth, MA” as drawn by Giampietro Architects – plans consist of Sheet AB1 ‘Existing Elevations’ dated 8/5/26 (must be typo – should be 2016 on all Sheets), Sheet AB2 ‘Existing Floor Plans’ dated 8/5/26, and Sheet A1 ‘New Elevations’ dated 8/5/26– all plans with a Board date ‘received’ stamp of January 19, 2017; and

“Renovations and Addition to: Winer Residence 14 Maker Lane Falmouth, MA” as drawn by Giampietro Architects – Sheet No. A2 ‘New Floor Plans & Sections’ dated 8/5/26 with a revision date of 3/14/2017 and with a Board date ‘received’ stamp of March 16, 2017.

Hearing:

Attorney Kevin Klauer spoke on behalf of the applicant and reviewed the subject property, previous special permit and proposed addition to the existing second floor to create a space to relocate a bedroom from the first floor. He explained the existing nonconforming setback of 22.1’ to the front yard property line and the 31’ setback to the coastal bank of the marsh (nonconforming 41’ to the 4’ contour line off the waters of Little Sippewissett Marsh). The height of the existing structure is 26’ and will not change through this special permit as the proposed addition will not be any taller than the existing second floor as it will match the existing ridge height. The dwelling will remain a two-bedroom dwelling – the addition will allow them to put both bedrooms on second level. The area where one of the bedrooms was on the first floor will become a full bathroom. The first floor will be renovated to allow a larger kitchen. Attorney Klauer explained the confusion with the plans originally submitted and the location of the bedrooms that were approved in 2007 via a special permit and the existing plans submitted for this application. The basement area will be all storage area with wall area being opened up so as not to meet the criteria of a bedroom (see plans noted herein).

The Board discussed plans with Attorney Klauer and the comments submitted to the file regarding the septic system and drywells. Attorney Klauer said the applicant would be amenable to adding drywells. He stated that the septic system was not required to be inspected as there is no increase in the number of bedrooms proposed. A member asked if the applicant would be amenable to a deed restriction of two bedrooms and Attorney Klauer said that they would be with a caveat that language would be added regarding possible upgrade of septic.

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

Deborah Gove of 18 Maker Lane stated opposition citing the septic system adequacy. She stated she feels this is a three-bedroom house with a finished basement and that the septic is located within what appears to be a marsh area.

Elizabeth Gardner of 10 Maker Lane stated opposition and said she is concerned with the number of bedrooms that may exist. She stated that the septic has been pumped a few times and that there are many cars on site.

Raymond Matchalot of 10 Maker Lane stated opposition and said he was concerned about the septic system and he believes it is polluting the marsh.

Attorney Klauer stated that Conservation Commission has approved the proposed plan; and he further stated that the Board of Health approved the plan.

Note: E-mail from Board of Health agent on 3/14/2017 to Building Department with Zoning Administrator copied, noted that the applicant previously added a bedroom but were supposed to remove one of the existing bedrooms as no septic upgrade was being done. The Agent wrote that he noted on ConComm's plan that it was to remain a two-bedroom home.

#### Board Discussion:

Board consensus is a concern regarding the septic system as testimony from abutter was that it is pumped at least once a year and they only use the house two months out of each year. There was no information submitted regarding the septic system and no referral from the Board of Health. Member Foreman suggested a condition would be to have the septic system inspected prior to building permit being issued as the '*adequacy of method of sewage disposal*' is within the 'Decision' criteria – Section 240-216 E.

Attorney Klauer stated that Title V guidelines for inspections are clear and feels that it is not the Board's role to condition an inspection of a septic system.

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 14 Maker Lane in West Falmouth contains 13,067 square feet of Residential B zoned land that is not located within any overlay district. The subject dwelling has a nonconforming setback of 22.1' to the front property line off Maker Lane that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The subject dwelling also has a nonconforming setback of 41' to the 4' contour line (NGVD) off the waters of Little Sippewissett Marsh that requires a 50' setback under Section 240-68 D. of the Code of Falmouth. The applicant applied under Section(s)

240-3 C. of the Code of Falmouth to construct an addition to the second floor to create a new master bedroom. The proposed will relocate one of the two bedrooms that is currently on the first floor to the second floor – both bedrooms will be on the second floor. The basement space will be altered so as not to meet the criteria of a bedroom and shall be used as storage. It was noted during the hearing that the basement space is finished. The proposed addition to the second floor will match the existing second floor ridge line; there is no increase to the existing footprint as proposed.

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 is not substantially more detrimental than what currently exists. The Board further finds that the proposed second floor addition will not increase the nonconforming setbacks on subject property as noted above; and the lot coverage by structures will remain at 10.3% - well below the 20% maximum allowed in this residential zoned district.

The Board finds that the proposed plans submitted and reviewed by this Board show that the first floor will undergo renovations to increase the kitchen area and create a full bathroom in the space that will be vacated by a bedroom that will be relocated on the second floor. The Board further finds that the single-family dwelling represented herein will remain a two-bedroom dwelling and that the applicant is amenable to filing a Deed Restriction at the Barnstable Registry of Deeds, as approved by this Board, that limits this dwelling to a two-bedroom dwelling unless and until a new septic system, approved by the Board of Health, is installed on subject property.

The Board finds that due to the concern of the existing septic system that has not been recently inspected and, according to abutters, has been pumped at least once a year recently (with use of the dwelling only two months out of each year) and appears to be in the marsh area (rear of dwelling), that a condition of this special permit will be to have the septic system inspected prior to the issuance of a building permit to verify adequacy of the system.

The Board finds that the applicant's representative stated that the applicant is amenable to installing drywells to maintain stormwater runoff on subject property and away from the marsh area (Little Sippewissett Marsh).

In addition to the above findings, the Board finds that the proposed addition to the second floor as represented herein 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 to the second floor as there will be no increase in the existing footprint and no increase to the existing nonconforming setbacks on subject property.

B. The site is suitable for the proposed use as a two-bedroom single-family dwelling and said dwelling will remain a two-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 slightly changed, but appears not to have 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 sewage disposal system will require inspection prior to the issuance of a building permit as conditioned herein due to concerns by the Board based on testimony given during hearing.

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 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 second floor of existing 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 Hurrie 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 Fourteen Maker Lane LLC (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the second floor to create additional habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 14 Maker Lane, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The addition to the second floor, all setbacks, height of proposed addition, lot coverage, limit of two-bedrooms, storage in basement and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Existing Conditions Plan for #14 Maker Lane” prepared for Liz & Brad Winer in Falmouth, MA as drawn by Falmouth Engineering, Inc. on Sheet 1 of 1 dated October 21, 2017 with a final revision date of 2/21/2017 and with a Board date ‘received’ stamp of March 7, 2017;
  - “Renovations and Addition to: Winer Residence 14 Maker Lane Falmouth, MA” as drawn by Giampietro Architects – plans consist of Sheet AB1 ‘Existing Elevations’ dated 8/5/26 (must be typo – should be 2016 on all Sheets), Sheet AB2 ‘Existing Floor Plans’ dated 8/5/26, and Sheet A1 ‘New Elevations’ dated 8/5/26– all plans with a Board date ‘received’ stamp of January 19, 2017; and

- “Renovations and Addition to: Winer Residence 14 Maker Lane Falmouth, MA” as drawn by Giampietro Architects – Sheet No. A2 ‘New Floor Plans & Sections’ dated 8/5/26 with a revision date of 3/14/2017 and with a Board date ‘received’ stamp of March 16, 2017.
- 2. If deemed appropriate by the project engineer, the applicant shall install drywells on site as recommended by the Town Engineering Department through referral as noted herein. The drywells shall be installed to keep stormwater runoff from the Marsh, roadway and abutters properties.
- 3. The septic system on subject property shall be inspected by a licensed septic inspector prior to the issuance of a building permit. A copy of said inspection shall be submitted to the Board of Health and the Zoning Board of Appeals for verification of adequacy of system.
- 4. The applicant shall submit a draft of a Deed Restriction limiting the subject property to a two-bedroom dwelling, unless and until a new septic system and/or sewer system is installed enabling the property owners to increase the number of bedrooms on subject property. The draft shall be submitted to the Board of Appeals for approval prior to being signed off by the Town and Applicant. The Deed Restriction shall be filed with the Barnstable County Registry of Deeds with a copy of said filing submitted to the Board of Appeals prior to final sign-off of the building permit by the Building Department or the Zoning Administrator.
- 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: **005-17**

Applicant: **FOURTEEN MAKER LANE LLC of Charlotte, NC**

Subject Property: **14 Maker Lane, West Falmouth, MA**

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 23 2017**

FALMOUTH TOWN CLERK

*dd @ 2:50 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.