

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 014-17
APPLICANT/OWNER: ROBERT M. MALONEY and JANE M. MALONEY of Falmouth, MA
SUBJECT PROPERTY: 19 Crescent Avenue, Falmouth, MA
Assessor's Map: Map 46B, Section 10, Parcel 018, Lot 008A
DEED/CERTIFICATE: Book 13950 / Page 177
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 6, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to demolish existing rear deck, construct addition and new deck creating an enclosed porch entrance to the pre-existing nonconforming dwelling on subject property known as 19 Crescent Avenue, 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 May 4, 2017.
4. The public hearing was terminated on May 4, 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 of 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

None

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

03/03/2017 Attorney Kevin Klauer filed with the Town Clerk and submitted to the Board of Appeals an application, fee, letter of authorization, plans, photos of existing dwelling and lot coverage calculations for Board review and public hearing

- 03/06/2017 The ZBA staff filed an amended application with the Town Clerk with Attorney Klauer's authorization – amended application to be a modification of previous special permits
- 04/04/2017 Attorney Klauer submitted to the file copies of the plot plan and architectural plans that were revised on March 31, 2017 and revised lot coverage calculations
- 04/24/2017 Attorney Klauer submitted to the file copies of the plot plan with a second revision date of April 17, 2017 (deck layout change)

Letters/Referrals/E-mails from Town Departments

- 03/07/2017 Referral submitted to the file by the Planning Department staff with no comment
- 03/07/2017 Referral submitted to the file by the Director of Assessing with no comment
- 03/09/2017 Referral submitted to the file by the Falmouth Fire Rescue Dept. with no comment
- 03/31/2017 ZBA staff submitted to the file a copy of Special Permit 35-06 and Special Permit 27-02 granted for subject property
- 04/03/2017 Referral submitted to the file by Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Crescent Avenue 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. Drywells are proposed for this project.*
- 04/03/2017 Referral submitted to the file by Conservation Commission with the note: *Contain stormwater on property*

Plans submitted by Applicant/Applicant's Representative

“Plot Plan – Proposed Additions” prepared for Robert & Jane Maloney 19 Crescent Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. dated February 28, 2017 with a final revision date of April 17, 2017 – stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date ‘received’ stamp of April 24, 2017;

“Addition Design Maloney Residence 19 Crescent Ave. Falmouth, MA” drawn by Architecture by SPB consisting of Drawing A1 “Revisions” dated 1/9/2017 showing existing first and second floor plan with proposed Front, Right and Rear Elevations with a Board date ‘received’ stamp of March 3, 2017; and

“Addition Design Maloney Residence 19 Crescent Ave. Falmouth, MA” drawn by Architecture by SPB consisting of Drawing A2 “Revisions” dated 1/9/2017 and revised

on 3/30/2017 – showing Existing Foundation and Proposed First Floor Layout with a Board date ‘received’ stamp of April 4, 2017.

Hearing:

Attorney Kevin Klauer reviewed the existing conditions and proposed changes to the first floor plan while removing existing deck on southwest corner of dwelling to construct an addition and create new family room and add a smaller deck as a covered porch entry at the mid-point on westerly façade of dwelling. There will be no change to the second floor, four bedrooms existing, four bedrooms proposed and no increase in height of the structure. The lot coverage by structures will be increased from 21.07% to 22.22%

The Board discussed plans with Attorney Klauer and noted that the shed recently put on subject property (see previous special permit submitted to the file) increased lot coverage to a nonconforming 21.07% where it was 19.8%, which required a modification of the Special Permit; the Board agreed the application currently before the Board will remedy the oversight. 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 Foreman made a motion to close the hearing. Member Van Keuren 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 19 Crescent Avenue in Falmouth contains 9,001 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to demolish existing deck at rear corner of the dwelling, construct an addition and a small deck as a covered entry at the westerly side of the dwelling. The structure has a pre-existing nonconforming setback to the front property line off Crescent Avenue of 12.9’ that requires a 25’ setback pursuant to Section 240-68 A. of the Code of Falmouth and lot coverage by structures on subject property that exceeds the 20% maximum by right in a residential district under Section 240-69 A. of the Code of Falmouth. The shed at the southwest corner of the lot is 18.8’ from the front property line off Vesper Avenue that requires a 50’ setback and a special permit pursuant to Section 240-68 A. (8) of the Code of Falmouth. The Board did find that the shed structure was located on subject property since the last special permit granted in 2006 [#35-06] and finds that this modification will remedy the increase in lot coverage due to the shed on said property; but did not make a finding on the shed’s location of less than 50’ from the front property line off Vesper Ave., nor did Attorney Klauer ask for the application to be amended to include Section 240-68 A. (8) of the Code of Falmouth. However, the applicant can seek remedy from the Building Commissioner as stated in Section 240-13 “Yard, Front” – Sub-section B.

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 demolition of existing deck at southwest corner of dwelling, the addition basically in same footprint of deck and an addition of a smaller deck creating a covered porch on the westerly façade of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed additions to the dwelling will not create any new nonconforming setback and will not increase the existing nonconforming setback. Furthermore, the Board finds that the increase in lot coverage by structures creates an enhancement to the existing structure and utilization of said structure by its residents and is minimal.

The Board finds that the shed existing in the southwest corner of the subject property shall remain. The Board further finds that the applicant, according to the Plot Plan, intends to install drywells on the property to maintain stormwater runoff onto the site.

The Board finds that the single-family dwelling on subject property will remain a four-bedroom single-family dwelling.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to grant a special permit to increase the lot coverage by structures beyond the 20% maximum amount allowed by right, but not to exceed 25% after consideration by the Board of an impacts to the neighborhood by the size and height of a structure, any shadow effect on adjacent properties, any impact on a view or vista from a public roadway or any effect of nitrogen on a coastal embayment.

The Board finds that the shed was added to the subject property since the 2006 Special Permit was granted, which increased the lot coverage to 21.07% by structures – making it nonconforming; and the Board finds that remedy for said noncompliance with lot coverage through the shed addition will be remedied through this Special Permit. The Board further finds that the increase of lot coverage by structures on subject property is in keeping with the neighborhood based on the lot coverage calculations of 36 properties within the general area of subject property that Attorney Klauer submitted to the file. Furthermore, the Board finds that the proposed removal of existing deck and the additions to the single-family dwelling as represented herein have no effect or adverse impact on the neighborhood or subject property and is therefore approvable herein.

In addition to the above findings, the Board finds that the proposed 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 removal of existing deck and additions shown on the plans approved and noted herein as there will be no new nonconforming setbacks created and the existing nonconforming setback will not be increased through this approval.

B. The site is suitable for the proposed use as the property is, and will continue to be used as a four-bedroom single-family dwelling.

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 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 sewage disposal system is in place and signed off as a four bedroom system by the Board of Health.

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

G. The proposed additions 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 project 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 Foreman made a motion to Grant the Special Permit with conditions. Member Hurrie seconded the motion.

NOW THEREFORE

1. **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 this Special Permit as Modification of previous Special Permits** to Robert M. and Jane M. Maloney (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to demolish existing rear deck, construct addition and new deck creating an enclosed porch entrance to the pre-existing nonconforming dwelling on subject property known as 19 Crescent Avenue, Falmouth, MA. This special permit is subject to the following conditions:

1. The removal of the existing deck at the southwest corner of the dwelling, the addition creating the new family room, all setbacks, lot coverage 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:
 - "Plot Plan – Proposed Additions" prepared for Robert & Jane Maloney 19 Crescent Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. dated February 28, 2017 with a final revision date of April 17, 2017 – stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date 'received' stamp of April 24, 2017;
 - "Addition Design Maloney Residence 19 Crescent Ave. Falmouth, MA" drawn by Architecture by SPB consisting of Drawing A1 "Revisions" dated 1/9/2017 showing existing first and second floor plan with proposed Front, Right and Rear Elevations with a Board date 'received' stamp of March 3, 2017; and

- “Addition Design Maloney Residence 19 Crescent Ave. Falmouth, MA” drawn by Architecture by SPB consisting of Drawing A2 “Revisions” dated 1/9/2017 and revised on 3/30/2017 – showing Existing Foundation and Proposed First Floor Layout with a Board date ‘received’ stamp of April 4, 2017.
- 2. The applicant shall submit an as-built plan post construction showing all setbacks and lot coverage prior to the final sign-off by the Building Department and/or Zoning Administrator.
- 3. There shall be no more than four (4) bedrooms allowed on subject property.
- 4. There shall be no additions or additional accessory structures added to the subject property without prior approval by the Board of Appeals.
- 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: **014-17**

Applicant: **ROBERT M. MALONEY and JANE M. MALONEY of Falmouth, MA**

Subject Property: **19 Crescent Avenue, Falmouth, Massachusetts
Map 46B, Section 10, Parcel 018, Lot 008A**

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 a Modification to previous Special Permits as presented to the Board, based on the Findings stated herein and with the above stated Conditions.




Terrence J. Hurrie, Clerk, Board of Appeals

RECEIVED

MAY 10 2017

FALMOUTH TOWN CLERK



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.