

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 021-17

APPLICANT/OWNER: STEPHEN J. GILHOOLY & LISA B. WALLACE of No. Falmouth, MA

SUBJECT PROPERTY: 4 Holmes Street, North Falmouth, Massachusetts
Assessor's Map: Map 02A, Section 03, Parcel 010D, Lot 000

DEED/CERTIFICATE: Book 12992 / Page 288

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 28, 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 a two-car attached garage with habitable space above and a front porch to the pre-existing nonconforming single-family dwelling on subject property known as 4 Holmes Street, North Falmouth, 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 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 Contractor Nason Swain, 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)

03/28/2017 Nason Swain, on behalf of the applicant, submitted to the Board of Appeals an application, authorization, fee and four sets of site and architectural plans for the public hearing process

Letters/Referrals/E-mails from Town Departments

- 03/30/2017 Referral submitted to the file by the Planning Department staff with no comment
- 03/30/2017 Referral submitted to the file by Falmouth Fire Rescue with no comment
- 04/03/2017 Referral submitted to the file by Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof runoff
- 04/03/2017 Referral submitted to the file from Conservation Commission that notes 'contain stormwater on the property'
- 04/04/2017 Referral submitted to the file from Director of Assessing with no comment

Plans submitted by Applicant/Applicant's Representative

"Plot Plan of Land" prepared for Stephen Gilhooly Showing Proposed Addition as drawn by John P. Doyle, III on a plan dated March 26, 2017 – stamped and signed by John P. Doyle on 4/10/2017 and with a Board date 'received' stamp of April 13, 2017; and

"Gilhooly 4 Holmes Street North Falmouth, MA" architectural plans drawn by David McLean consisting of Pages 1 of 7 through 7 of 7 all dated 3/6/2017 showing existing and proposed elevation plans, floor plans, basement and roof plans – all with a Board date 'received' stamp of March 28, 2017.

Hearing:

Nason Swain was present and reviewed the existing site conditions, floor plans and reviewed proposed plans for the addition of an attached two-car garage with habitable space above and a height of 26' from mean grade off Garnet Avenue. The dwelling has four bedrooms existing, including one in the basement that will be removed to the first floor. The proposed space above the garage will be to create a new master bedroom with bathroom. There will be no bedrooms in the basement; and the dwelling will remain as a four-bedroom dwelling. Mr. Swain explained that the structure is pre-existing nonconforming due to a front yard setback for 23' to Homes Street; and that the Building Commissioner has signed off on a plan noting that Holmes Street is the front yard and Garnet Avenue frontage will be a side yard for subject property [pursuant to Section 240-13 'Yard, front'].

The Board discussed plans with Mr. Swain and the concern of the parking area created at garage off Garnet Ave that shows on the plan 17' at the southwest corner of the garage and 19' at the southeast corner of the garage – not much room for a vehicle to park. Stormwater concern was answered by Mr. Swain who stated that the drive pitches to the yard and the applicant will add stone pavers.

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 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 4 Holmes Street in North Falmouth contains 19,212 square feet of Residential B zoned land that is located within the Megansett Harbor Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an attached two-car garage and a front porch to the pre-existing nonconforming single-family dwelling on subject property. The dwelling structure has a nonconforming setback of 23' to the front property line off Homes Street. Holmes Street was designated by the Building Commissioner on 3/28/2017 as the front yard and the frontage off Garnet Avenue will be a side yard – see plan submitted to the file and initialed by Building Commissioner Rod Palmer. The proposed two-car garage will have habitable space above that will be used to create a new master bedroom with bathroom. The bedroom in the basement will be removed so that there will be only four bedrooms on subject property.

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 attached two-car garage and new front porch added to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed garage and front porch will be in compliance with setback requirements and not create any new nonconforming setback nor increase the existing nonconforming setback. It is noted herein that the Building Commissioner determined that Holmes Street is the front yard and that the frontage on Garnet Avenue is a side yard under Section 240-13 “Definitions” – ‘Yard, front’.

The Board finds that Garnet Street appears closer to the proposed garage than the 17' and 19' setback shown on the plan noted herein and therefore will require an as-built as verification.

The Board finds through testimony and by plans submitted and reviewed by the Board, that there will be only four (4) bedrooms on subject property and that there will be no bedrooms created within the basement area.

The Board finds through the plans submitted and by testimony by the applicant's representative that the height of the proposed garage structure will be 26'.

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 garage and front porch addition as the additions will not increase the existing nonconforming 23' setback to Holmes Street and no new nonconforming setbacks will be created.

B. The site is suitable for the proposed use as the property is zoned residential and testimony by applicant's representative is that it will continue to be used as a 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 – the bedroom count will remain as four (4) bedrooms; 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 sewage disposal system is in place and signed off as a four (4) bedroom system by the Board of Health and the additions approved herein will be reviewed by the Board of Health for sign off on building permit prior to construction.

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

G. The proposed additions to the 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 attached two-car garage and front porch addition 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 Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Stephen J. Gilhooly and Lisa B. Wallace (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a two-car attached garage with habitable space above and a front porch to the pre-existing nonconforming single-family dwelling on subject property known as 4 Holmes Street, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The garage and front porch addition, all setbacks, lot coverage, height of garage 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 of Land" prepared for Stephen Gilhooly Showing Proposed Addition as drawn by John P. Doyle, III on a plan dated March 26, 2017 – stamped and signed by John P. Doyle on 4/10/2017 and with a Board date 'received' stamp of April 13, 2017; and
 - "Gilhooly 4 Holmes Street North Falmouth, MA" architectural plans drawn by David McLean consisting of Pages 1 of 7 through 7 of 7 all dated 3/6/2017 showing existing and proposed elevation plans, floor plans, basement and roof plans – all with a Board date 'received' stamp of March 28, 2017.
2. The applicant shall submit to the Board of Appeals for approval, prior to final sign off of the project by the Building Department and/or Zoning Administrator, an 'as-built' plan verifying the setback from the garage proposed to the property line off Garnet Avenue.
 3. There shall be no more than four (4) bedrooms allowed on subject property.
 4. There shall be no bedroom or sleeping accommodations allowed within the basement area of subject dwelling.
 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. 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: **021-17**

Applicant: **STEPHEN J. GILHOOLY and LISA B. WALLACE of No. Falmouth, MA**

Subject Property: **4 Holmes Street, North Falmouth, MA
Map 02A, Section 03, Parcel 010D, Lot 000**

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

MAY 11 2017

FALMOUTH TOWN CLERK

dp@825am
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.