

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 020-17

**APPLICANT/OWNER:** JOHN B. CERVONE, IV of Lynnfield, MA 01940

**SUBJECT PROPERTY:** 28 Priscilla Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 39A, Section 33, Parcel 000, Lot 054

**DEED/CERTIFICATE:** Certificate #210819 – Plan 4286A 0 Plate 4 (Lots 53, 54 and 55)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of March 27, 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 construct a deck, a full dormer to rear of second level, a front dormer and a one-story addition to the first floor of the pre-existing nonconforming single-family dwelling on subject property known as 28 Priscilla Street, 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 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 present at the hearing along with John B. Cervone, III, 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**

05/04/2017 John Cervone, III submitted for the record five (5) letters of no opposition signed by individuals: 1) Phillip & Deborah Mastroianni (both signed letter) of 44 Priscilla Street; 2) Tom & Janet Cottens (both signed letter) of 39 Priscilla Street; 3) Eleanor Phillips of 11 Priscilla Street; 4) Frank Albano of 36 Priscilla Street; and 5) Brett Painchaud of 6 Priscilla Street

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

Applicant submitted several e-mails and information to file in response to questions from staff (see file)

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

- 03/28/2017 Referral submitted to the file from the Planning Department staff with no comment
- 03/30/2017 Referral submitted to the file from Falmouth Fire Rescue with no comment
- 04/03/2017 Referral submitted to the file from Engineering Department with comments: *This application was reviewed only for impacts to public right of ways and public utilities. Priscilla 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 drywells, rain garden, or other stormwater measure for the new roof. It appears that the new shell driveway will be constructed against the existing asphalt apron. If this is the case, no permit would be required, if the apron will be replaced, a permit may be required. Please clarify.*
- 04/03/2017 Referral submitted to the file from Conservation Commission states: *Provided stormwater is contained on the property and does not contribute to run off into Little Pond.*
- 04/04/2017 Referral submitted to the file from Director of Assessing that states: *Includes Lots 53, 54 and 55 (ZBA staff shows Plan on first page)*

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

“Plot Plan – Proposed Addition” prepared for John Cervone 28 Priscilla Street, Falmouth, MA as drawn by BSS Design, Inc. on a plan dated March 24, 2017 – stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date ‘received’ stamp of April 27, 2017; and

“Phase 2 Cervone Residence 28 Priscilla Street Falmouth, MA” as drawn by Fish Street Design Architecture consisting of:

- Drawing SD.2 ‘First Floor Plan with a final date of 3/23/17 with a Board date ‘received’ stamp of March 27, 2018;
- Drawing A.3 ‘Second Flr Plan/Roof Framing with a final date of 10/1/2016 and a Board date ‘received’ stamp of April 5, 2017;
- Drawing SD.3 ‘Elevations’ with a final date of 3/23/2017 and a Board date ‘received’ stamp of March 27, 2017;
- Drawing SD.4 ‘Elevations’ with a final date of 3/23/2017 and a Board date ‘received’ stamp of March 27, 2017; and

- Drawing A.5 'Section/Details' with a final date of 10/1/2016 and with a Board date 'received' stamp of March 27, 2017.

#### Hearing:

John Cervone, III and John Cervone, IV reviewed the existing site conditions and the proposed plans to construct a dormer to the front façade, a full dormer to the rear façade, a one-story addition to the east side of the dwelling and a deck addition to the northeast corner of the dwelling. Mr. Cervone explained the existing dwelling has 916 square feet of space and they would like to dormer the attic and create additional habitable space that would increase living area to approximately 1,200 square feet of space. The property is scheduled to attach to Town sewer and they will be allowed four (4) bedrooms. The proposed plan shows four bedrooms (three actual bedrooms shown on the plan with a den that meets the criteria of a bedroom). He reviewed the lot coverage calculations that he submitted to the file that shows out of 43 properties in the general area, 12 properties have lot coverage by structures of 25% or greater, 26 of the homes have lot coverage by structures greater than 20%.

The Board discussed plans with the applicants and asked about drywells based on Engineering's referral; intent of accessory structure and concern with lot coverage by structures increase from 12.72% to 24.32%. Mr. Cervone stated that all materials for driveway will be pervious and feels that a drywell is not necessary. He stated that there is no intent to add any accessory structures (shed/garage) to subject property. Mr. Cervone discussed issue of lot coverage by structures and agreed to reduce the size of the proposed 12' x 28.5' deck to 12' x 20' (reduction is approximately 102 sf).

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:

1. The subject property located at 28 Priscilla Street in Teaticket contains 7,200 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. and 240-69 E. of the Code of Falmouth to construct a deck, full dormer on second level, front dormer and a one-story addition to the first floor of the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure has a nonconforming setback from the structure to the front property line off Priscilla Street of 21.4' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and a 7.6' setback from the dwelling structure to the westerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The property currently is in compliance with Section 240-69 A. with lot coverage by structures less than the 20% maximum allowed by right in this residential zoned district. The proposed plans will increase the lot coverage

by structures to 24.7% and the applicant is seeking relief under Section 240-69 E. of the Code of Falmouth. The subject property is scheduled to be attached to the Town sewer system and will then be allowed a maximum of four (4) bedrooms on subject property. The plans submitted and reviewed by the Board show three (3) bedrooms proposed and a den that meets the criteria of a bedroom – totaling four (4) bedrooms.

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 additions to the pre-existing nonconforming single-family dwelling on subject property will not be substantially more detrimental than what currently exists and the proposed additions will be in keeping with the integrity and changes of the general neighborhood. The Board further finds that the proposed additions do not create any nonconforming setbacks and existing nonconforming front and west side yard setbacks will not be increased and shall remain as is. Furthermore, the Board finds that the proposed additions will enhance the existing small dwelling and allow for additional habitable space for better utilization by its residents.

The Board finds that the existing two-bedroom single-family cape style dwelling will be increased in size and will have the capability of four (4) bedrooms on subject property; three (3) bedrooms shown on plan with one (1) den that does meet the criteria of a bedroom; and that said increase in the number of bedrooms is by benefit of subject property being attached to the Town sewer.

Section 240-69 of the Code of Falmouth – “Maximum lot coverage.” – Sub-section E. allows an applicant to apply to the Board of Appeals to increase the maximum 20% lot coverage by structures allowed up to 25% after the Board considers the criteria set forth in this section regarding the height and size of structures compared to the surrounding neighborhood structures, if there is any overshadowing on adjacent property by altering a structure, any impact on a view or vista from a public way or any effect of nitrogen created on a coastal embayment.

The Board finds after consideration of criteria stated in Section 240-69 E. of the Code of Falmouth that the proposed additions to the pre-existing nonconforming single-family dwelling on subject property is of kind to other homes in the general neighborhood of subject property; that there will be no shadowing created on adjacent properties through the proposed; that there is no impact on a view or view from a public roadway; and that the proposed additions will not have an effect of nitrogen on a coastal embayment. The Board further finds that the increase in lot coverage is in keeping with the general neighborhood based on the calculations submitted by the applicant that shows out of the 43 properties listed 12 that have lot coverage by structures at more than 25% and 26 out of the 43 properties have lot coverage greater than 20% (as will be the case with the proposed discussed herein).

The Board finds that the applicant is amenable to decrease the size of the proposed 12' x 28.5' rear deck to 12' x 20' to lessen the lot coverage by structures. The Board further finds through testimony by the applicant that there is no intent to add any accessory structures (shed or garage) to subject property.

The Board finds through testimony by the applicant after reading referral from the Engineering Department, believes that since surfaces and material used on site and on driveway will be pervious, all runoff will be maintained on site and a drywell will not be necessary. The Board further finds that at

least one drywell should be installed at the front of the proposed addition to maintain runoff onto site. Furthermore, through testimony by the applicant the intent is to maintain the asphalt apron of the existing driveway (Engineering referral).

The Board finds that the proposed height of the dwelling will remain the same as the addition to the east side of the dwelling, creating a family room, will be a one-story addition so as not to add any additional bulk to the appearance of the dwelling. .

In addition to the above findings, the Board finds that the proposed 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 additions as the plans show that there will be no new nonconforming setbacks, no increase to the existing nonconforming setback and the lot coverage by structures that is being increased beyond the 20% is allowed through the approval by the Board of this Special Permit.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintain as a single-family dwelling through this special permit approval.

C. There will be minimal impact on traffic flow with no impact to safety from the increase in the number of two bedrooms to four bedrooms as allowed through Town's Wastewater Regulations; and there will be 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 subject property is scheduled to be attached to the Town sewer system by the Fall of 2017.

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 the Board did not receive a referral from the Town Water Department.

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 additions to the pre-existing nonconforming single-family 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 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 the Special Permit** to John B. Cervone, IV (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a deck, a full dormer to rear of second level, a front dormer and a one-story addition to the first floor of the pre-existing nonconforming single-family dwelling on subject property known as 28 Priscilla Street, Teaticket, MA. This special permit is subject to the following conditions:
  1. The addition of a full dormer on rear façade of 2<sup>nd</sup> floor, smaller dormer on front façade of 2<sup>nd</sup> floor, an addition to the east side of the dwelling with landing and stair, all setbacks, height of addition 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 Addition” prepared for John Cervone 28 Priscilla Street, Falmouth, MA as drawn by BSS Design, Inc. on a plan dated March 24, 2017 – stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date ‘received’ stamp of April 27, 2017; and

“Phase 2 Cervone Residence 28 Priscilla Street Falmouth, MA” as drawn by Fish Street Design Architecture consisting of:

    - Drawing SD.2 ‘First Floor Plan with a final date of 3/23/17 with a Board date ‘received’ stamp of March 27, 2018;
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    - Drawing SD.4 ‘Elevations’ with a final date of 3/23/2017 and a Board date ‘received’ stamp of March 27, 2017; and
    - Drawing A.5 ‘Section/Details’ with a final date of 10/1/2016 and with a Board date ‘received’ stamp of March 27, 2017.
  2. The applicant, as agreed to herein, shall decrease the size of the proposed deck at the rear of the dwelling to 12’ x 20’ and revise the “Plot Plan – Proposed Addition” noted in Condition 1 above to reflect the decrease in said deck, updating the lot coverage showing said change and show location of no less than one drywell at the front or front corner of the addition. The revised plan shall be submitted to the Board of Appeals for approval prior to the issuance of a Building Permit.
  3. There shall be no more than four (4) bedrooms allowed on subject property. It is noted herein that the proposed den shown on Drawing SD.2 of the plans listed in Condition 1 above meets the criteria of a bedroom and therefore the plans submitted show four (4) bedrooms.
  4. There shall be no shed or garage or any other accessory structure added to the subject property without further application and review 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: **020-17**

Applicant: **JOHN B. CERVONE, IV of Lynnfield, MA**

Subject Property: **28 Priscilla Street, Teaticket, Massachusetts  
Map 39A, Section 33, Parcel 000, Lot 054**

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.

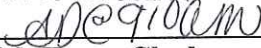


**Terrence J. Hurrie, Clerk, Board of Appeals**

**RECEIVED**

**MAY 17 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.