

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 026-17

APPLICANT/OWNER: BRIAN J. O'CONNOR & SANDRA ALLEN O'CONNOR of Acton, MA

SUBJECT PROPERTY: 84 Walker Street, Falmouth, Massachusetts
Assessor's Map: Map 47A, Section 11, Parcel 054, Lot 000B

DEED/CERTIFICATE: Book 27857 / Page 319

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 10, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-216 of the Code of Falmouth to construct additions within the footprint of the existing decks, increasing existing habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 84 Walker Street, 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 June 1, 2017.
4. The public hearing was terminated on June 1, 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 Michael McGrath, P.E. and P.L.S. with Holmes and McGrath, Inc., 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)

None

Letters/Referrals/E-mails from Town Departments

- 04/12/2017 Referral submitted to the file from the Director of Assessing with no comment
- 04/13/2017 Referral submitted to the file from the Planning Department staff with no comment
- 04/27/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/12/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Walker and Prospect Streets are Public right of ways 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. All work appears to fall within existing porch and deck footprints.*

Plans submitted by Applicant/Applicant's Representative

“Plan of Proposed Addition” prepared for Brian & Sandra O’Connor for Parcel B, #84 Walker Street in Falmouth, MA as drawn by Holmes and McGrath, Inc., plan dated March 22, 2017 – Sheet 1 of 1, stamped and signed by Michael B. McGrath, Inc., P.L.S. and with a Board date ‘received’ stamp of April 10, 2017; and

“Additions & Alterations to: The O’Connor Residence 84 Walker Street Falmouth, MA” as drawn by Giampietro Architects consisting of Sheet No. A1 ‘Floor Plans Elevations’ dated 4/7/2017 with a Board date ‘received’ stamp of April 10, 2017 and Sheet No. A2 ‘Second Foundation Plan’ dated 4/7/2017 and with a Board date ‘received’ stamp of April 10, 2017.

Neighborhood Bulk Coverage Analysis for 84 Walker Street, Falmouth, MA as prepared by Holmes and McGrath, Inc. with a Board date ‘received’ stamp of April 10, 2017.

Hearing:

The Board discussed the proposed plans with Mr. McGrath and their concern with the nonconforming lot coverage becoming more nonconforming – albeit slightly – but still an increase. All other concerns and questions were addressed. Note: The existing nonconforming lot coverage is 27.4% by structures and 42.1% total lot coverage.

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 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 84 Walker Street in Falmouth contains 5,800 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 240-216 of the Code of Falmouth to construct additions within the footprint of the existing decks, adding to habitable space within the pre-existing nonconforming single-family dwelling. The property is pre-existing nonconforming due to a nonconforming setback of 11' from the structure to the front yard property line off Walker Street and an 11.5' setback from the structure to the front yard property line off Prospect Street - both front yard setbacks require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage by structures at 27.4% and by structures, parking and paving at 42.1% are pre-existing nonconforming as they exceed the maximum percentage allowed under Section 240-69 A. and E. of the Code of Falmouth. The proposed additions to the existing single-family dwelling are being constructed over existing decks and therefore will not increase the existing footprint. However a chimney is being added that protrudes approximately 1' x 4' from structure which will increase the nonconforming lot coverage by .1%. There will be no increase to the number of the three (3) bedrooms existing. The addition at the rear of the dwelling will create $\frac{3}{4}$ bathroom and the small addition at the front will slightly increase the living room area.

Section 240-3 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 small additions to the pre-existing nonconforming dwelling, being constructed over existing deck areas, will not be substantially more detrimental than what currently exists. The Board further finds that the additions will not increase the existing footprint of the structure as it currently exists. However, the Board finds that the addition of a chimney, will increase the nonconforming lot coverage by structures and structures, parking and paving, which already exists over the maximum allowed by the Code of Falmouth. Furthermore, the Board is not condoning the increase in the lot coverage percentages and will rely on the applicant to maintain the lot coverage to be less or no more than 27.4% by structures and 42.1% by total lot coverage.

The Board finds that the shed existing on subject property will remain as there is no garage for storage of lawn maintenance equipment or other storage.

The Board finds through a discussion with the applicant's representative the possibility of reconfiguring the stairs to grade on the southwest corner of the existing deck so that the steps to grade are setback within the deck, thereby decreasing lot coverage. The Board further finds after discussion with the applicant's representative that the cure for keeping the lot coverage as it currently exists, or decreasing the lot coverage, will be the applicant's responsibility as the Board finds that increasing the nonconforming lot coverage is not appropriate in this application.

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 additions as they will be constructed within the existing footprint of the dwelling structure and will not increase the nonconforming setbacks nor create any new nonconforming setbacks. The lot coverage shall remain as existing, or less than existing – but shall not be increased.

B. The site is suitable for the proposed use as the property is zoned residential and testimony at the hearing by the applicant’s representative was that the dwelling is a single-family dwelling and the Board herein finds it shall be maintained 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 and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will basically be unchanged with no impact to the neighborhood’s visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. There is a sewage disposal system in place and all work proposed herein requires Board of Health approval prior to issuance of a building permit. There was no referral submitted to the file from the Board of Health informing the Board of adequacy of existing septic on subject property.

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

G. The proposed dwelling reconstruction 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 existing dwelling as represented and 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 Murphy 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 a Special Permit** to Brian J. and Sandra Allen O’Connor (herein referred to as Applicant) under Section(s) 240-3 C. and 240-216 of the Code of Falmouth to construct additions within the footprint of the existing decks, increasing existing habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 84 Walker Street, Falmouth, MA. This special permit is subject to the following conditions:

1. The construction of the additions, all setbacks, floor plans and use as a single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Additions & Alterations to: The O’Connor Residence 84 Walker Street Falmouth, MA” as drawn by Giampietro Architects consisting of Sheet No. A1 ‘Floor Plans Elevations’ dated 4/7/2017 with a Board date ‘received’ stamp of April 10, 2017 and Sheet No. A2 ‘Second Foundation Plan’ dated 4/7/2017 and with a Board date ‘received’ stamp of April 10, 2017.
 - Neighborhood Bulk Coverage Analysis for 84 Walker Street, Falmouth, MA as prepared by Holmes and McGrath, Inc. with a Board date ‘received’ stamp of April 10, 2017.
2. The plan submitted to the file and reviewed at the hearing entitled “Plan of Proposed Addition” prepared for Brian & Sandra O’Connor for Parcel B, #84 Walker Street in Falmouth, MA as drawn by Holmes and McGrath, Inc., plan dated March 22, 2017 – Sheet 1 of 1, stamped and signed by Michael B. McGrath, Inc., P.L.S. and with a Board date ‘received’ stamp of April 10, 2017 shall be revised and submitted to the Board of Appeals for approval showing a plan to keep the same lot coverage as existing [27.4% and 42.1%] or lessening the same. The revised plot plan shall be submitted for approval to the Board of Appeals prior to the issuance of a building permit. This Special Permit shall be contingent on this Condition.
3. 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.
4. 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.)
5. 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: **026-17**

Applicant: **BRIAN J. O'CONNOR & SANDRA ALLEN O'CONNOR
of Acton, MA**

Subject Property: **84 Walker Street, Falmouth, Massachusetts
Map 47A, Section 11, Parcel 054, Lot 000B**

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

JUN - 7 2017

FALMOUTH TOWN CLERK

AD @ 10:20am

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.