

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 047-17

APPLICANT/OWNER: TERRY THOMAS and LAURA THOMAS of Canton, MA

SUBJECT PROPERTY: 73 Oak Street, Teaticket, Massachusetts
Assessor's Map: Map 39A, Section 14, Parcel 000, Lot 116

DEED/CERTIFICATE: Certificate 180327 – Plan 4286A, Lots 116, 117 and 118 (Plate 7)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 13, 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 deck and an addition creating new habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 73 Oak 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 August 3, 2017.
4. The public hearing was terminated on August 3, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Associate Member Robert Dugan and Associate Gerald Potamis (sitting as voting members) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by David McMenemy, 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

06/20/2017 Referral submitted to the file from the Planning Department staff with no comment

- 06/20/2017 Referral submitted to the file from Conservation Commission that states: *provided all stormwater is contained on property from construction*
- 06/22/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/28/2017 Referral submitted to the file from the Director of Assessing noting that subject property includes Lots 116, 117 and 118
- 07/11/2017 Referral submitted to the file from the Town Engineering Department with standard comments (see file) and an additional comment noting: *Additional detail showing an apron and proposed surface materials will be required. Just for reference, please note that there is a street opening moratorium on Oak Street until April 2022.*

Plans submitted by Applicant/Applicant's Representative

“Plot Plan of Land” prepared for #73 Oak Street Falmouth, Massachusetts” as drawn by Stephen Doyle and Associates on a plan dated march 15, 2017 with a final revision date of July 14, 2017 – plan is stamped, signed and dated 7/14/17 by Stephen J. Doyle, P.L.S. and plan has a Board date ‘received’ stamp of July 17, 2017; and

“Terry Thomas – Remodel & Addition of Existing Cottage” plans as drawn by Belanger Engineering Inc. consisting of Drawing T1 ‘Proposed Elevations’, Drawing A1 ‘Proposed Basement, First Floor Attic Floor & Roof’, Drawing A2 ‘Proposed Front Rear & Side Elevations’, Drawing S1 ‘Proposed Elevations’, Drawing S2 ‘Typical Sections, Details Notes’, Drawing E1 ‘Exist Basement, First Floor Attic Floor & Roof Plan’ and Drawing E2 ‘Exist Front Rear & Side Elevations’ – all dated January 20, 2017 and all with a Board date ‘received’ stamp of June 13, 2017.

Hearing:

David McMenemy reviewed the site and proposed two-story addition on the west side of the dwelling creating a new family room on first floor and a master bedroom on second floor. The existing deck will be removed and not replaced or reconfigured. There is an existing shed located in the southwesterly corner of the lot that will remain (no setbacks of the shed given). The existing nonconforming setback from the dwelling structure to the front property line off Oak Street will not be made more nonconforming. The existing dwelling has three (3) bedrooms, the proposed addition will create an additional bedroom; the existing septic system will be abandoned and removed as property is being hooked to the Town sewer.

The Board discussed plans with McMenemy. All concerns and questions were addressed.

Chairman Foreman 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 Foreman 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 73 Oak Street in Teaticket contains 7,200 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the pre-existing nonconforming single-family dwelling on subject property. The existing one-story, three-bedroom dwelling has a nonconforming setback of 18.4' to the front property line off Oak Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage is in compliance with lot coverage requirements under Section 240-69 A. of the Code of Falmouth. The proposed two-story 24' x 20' addition as shown on the "Plot Plan of Land" submitted, will create a family room on the first floor and a new master bedroom on the second floor. The existing deck attached to the rear of the dwelling will be removed and not replaced. The shed in the southwest corner of the lot will remain as is (plan submitted does not show setbacks, but it appears it may have a nonconforming setback to the rear property line – Board did not discuss). There is an existing septic system that will be abandoned as the property is being hooked to the Town sewer. The dwelling will become a four-bedroom dwelling through this approval for special permit.

The Board finds that the architectural plans were revised after advertising of the Notice and Notice to Abutters were sent out. The applicant crossed out the deck on the plans submitted and the dimensions of the addition on the architectural plans do not match the "Plot Plan of Land" plan submitted. The Board finds that the addition of 24' x 20' with the removal of the existing deck is what is herein approved. The Board further finds that the applicant will be conditioned to submit revised floor and elevation plans prior to the issuance of a building permit for the project approved herein.

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 removal of the existing deck and the construction of a two-story addition to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed addition, with the removal of the existing deck, will keep the lot coverage in compliance with the Town Code. Furthermore, the Board finds that the proposed addition will not increase the existing nonconformity and it will not create any new nonconformity.

The Board finds that the proposed addition and renovation to the existing dwelling will be an improvement to the neighborhood and the subject property. The Board further finds through testimony by the applicant's representative that the basement being created under the addition will be used for storage; the space below existing dwelling is a crawlspace.

The Board finds that the proposed height of the addition will be 24.1', which is well below the 35' maximum height allowed under Section 240-70 of the Code of Falmouth. The Board further finds that the additional bedroom, bringing the dwelling's total bedrooms to four (4), is allowed pursuant to Wastewater regulations for this sewer area.

The Board finds through testimony of the applicant's representative and through the applicant's discussion with the Zoning Administrator, that the applicant is amenable to adding drywells as necessary in order to maintain stormwater runoff on the site. The drywells will be installed according to best engineering practice to maintain stormwater on the site to avoid runoff onto abutting properties and roadways.

In addition to the above findings, the Board finds that the proposed addition 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 as there is no increase in existing nonconformity and no new nonconformity proposed.

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

C. There will be no impact on traffic flow and safety as there is no change in the location of the existing driveway on site and the one additional bedroom approved may have a minimal effect on traffic onto and off the property.

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 will be hooked to the Town sewer and the existing Title V system will be removed from the site as required under CMR regulations and verified by Board of Health.

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 there was no referral received from the Water Department so unknown if water service line requires upgrade.

G. The proposed dwelling addition 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 existing 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 Hurrie 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 Terry and Laura Thomas (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to remove an existing deck and construct an addition creating new habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 73 Oak Street, Teaticket, MA. This special permit shall be subject to the following conditions:

1. The removal of the existing deck, the addition of the 24' x 20' two-story addition to the dwelling, all lot coverage, setbacks, height of proposed 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 of Land" prepared for #73 Oak Street Falmouth, Massachusetts" as drawn by Stephen Doyle and Associates on a plan dated march 15, 2017 with a final revision date of July 14, 2017 – plan is stamped, signed and dated 7/14/17 by Stephen J. Doyle, P.L.S. and plan has a Board date 'received' stamp of July 17, 2017
2. The architectural plans, "Terry Thomas – Remodel and Addition of Existing Cottage", submitted and noted within this Decision shall be revised to what was represented and approved herein. The deck

will be removed from the plan as represented and shown on the "Plot Plan of Land" noted in Condition 1 above; the footprint of the addition shall also reflect what is shown on said plot plan. All floor plans and elevations shall be revised and submitted to the Board of Appeals prior to the issuance of a Building Permit.

3. Drywells shall be installed on subject property to maintain stormwater runoff on the site. The project engineer shall determine the location of said drywells using best engineering practice to insure no runoff on to abutting properties and/or roadways.
4. There shall be no bedrooms or sleeping accommodations created within the proposed basement area.
5. There shall be no more than four (4) bedrooms allowed on subject property.
6. 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.
7. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. This permit shall lapse two 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: **047-17**

APPLICANT/OWNER: **TERRY THOMAS and LAURA THOMAS of Canton, MA**

SUBJECT PROPERTY: **73 Oak Street, Teaticket, Massachusetts**
Assessor's Map: **Map 39A, Section 14, Parcel 000, Lot 116**

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, Vice Chairman, Board of Appeals

RECEIVED

AUG 11 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.