

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 042-17
APPLICANT/OWNER: MICHAEL T. McDERMOTT & SUSAN D. McCARTHY of Sudbury, MA
SUBJECT PROPERTY: 71 King Street, Falmouth, Massachusetts
Assessor's Map: Map 47B, Section 01, Parcel 021, Lot 000
DEED/CERTIFICATE: Book 26485 / Page 128
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 6, 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 raze and reconstruct the detached garage and construct an addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 71 King 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 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, Clerk Kimberly Bielan, Member Ed Van Keuren and Associate Gerald Potamis (sitting as a voting member) 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 Attorney Kevin P. Klauer, II with 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)

06/06/2017 Attorney Klauer submitted, on behalf of the applicant, an application, letter of authorization, fee, photos of existing dwelling/garage, existing and proposed floor plans, elevations and site plan with septic upgrade

- 06/08/2017 Attorney Klauer submitted a letter with attachments to Zoning Administrator Budrow dated June 8, 2017 in response to request for information by ZBA Assistant DeMello on June 7, 2017
- 06/09/2017 Attorney Klauer sent an e-mail to ZBA Assistant DeMello in response to a request for information on same date

Letters/Referrals/E-mails from Town Departments

- 06/08/2017 Referral submitted to the file from Planning Department staff with no comment
- 06/12/2017 Referral submitted to the file from the Director of Assessing with no comment
- 06/19/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 06/20/2017 Referral submitted to the file from Conservation Commission with comment that subject property is not in their jurisdiction
- 07/11/2017 Referral submitted to the file from Town Engineering Department with standard comments (see file) and a recommendation to add dry wells, rain garden or other stormwater measure for roof runoff

Plans submitted by Applicant/Applicant's Representative

“Proposed Addition and Septic System Upgrade 71 King Street in Falmouth, Massachusetts” as drawn by Cape & Islands Engineering consisting of one Sheet 1 of 1 ‘Site and Septic Design Plan’ dated March 14, 2017 with a final revision date of 6/7/2017 and with a Board date ‘received’ stamp of June 8, 2017;

“Mike McDermott & Sue McCarthy 71 King St., Falmouth, MA” plans drawn by Longfellow Design-Build consisting of Drawing A100 ‘Proposed Basement Plan’ dated 3/4/2016, Drawing A101 ‘Proposed First Floor Plan’ dated 3/4/2016, Drawing A102 ‘Second Floor Plan’ dated 3/4/2016, Drawing A202 ‘Exterior Elevations’ dated 3/4/2016, Drawing A201 ‘Exterior Elevations’ dated 3/4/2016 – all with a Board date ‘received’ stamp of June 6, 2017; and

“Mike McDermott & Sue McCarthy 71 King St., Falmouth, MA” plan drawn by Longfellow Design-Build - Drawing A301 ‘Proposed Detached Garage’ dated 3/4/2016 with a revised date of 6/7/2017 and with a Board date ‘received’ stamp of June 8, 2017.

Hearing:

Attorney Klauer reviewed the existing site conditions, noting the nonconformities; and reviewed the proposed reconstruction of the detached garage and one-story addition to the pre-existing nonconforming single-family dwelling. The existing garage is dilapidated and not functional. The proposed garage is a two-car garage with a proposed height of 14.5’ that will not be heated and will have no loft or second level. The proposed addition to the dwelling is to create a master bedroom and bathroom on the first floor. The

existing dwelling has three (3) bedrooms (all on second floor), the proposed master bedroom will bring the total to four (4) bedrooms. There is an existing crawl space under existing dwelling; the addition will have a basement space that is anticipated to be used for storage and will be unfinished. The addition will have a height of 12'. The project includes upgrade of the septic system to a four (4) bedroom system. The shed on subject property will remain as existing. The lot coverage by structures on subject property will be increased from 12.9% to 19.87%, which is below the maximum allowed by Town Code. The applicant will be installing drywells to maintain stormwater runoff.

The Board discussed plans with Attorney Klauer. 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 Bielan made a motion to close the hearing. Member Van Keuren 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 71 King Street in Falmouth contains 12,713 square feet of General Residence zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the detached garage and construct an addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has an existing 15.1' setback from the front property line off King Street that requires at 25' setback pursuant to Section 240-68 A. of the Code of Falmouth and the dwelling also has a nonconforming setback to the southerly side yard property line of 7.9' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The detached garage that will be razed and reconstructed has a nonconforming setback of 3.3' as existing, but will be improved to have a 5' setback through reconstruction that is also required a 10' setback under Section 240-68 B. of the Code of Falmouth. The 161 square foot shed located near the westerly property line on subject property has a setback of 5.1' that requires a 10' setback as well – the shed is remaining as existing through this special permit application. The lot coverage existing and proposed is in compliance with Section 240-69 A. of the Code of Falmouth. The existing dwelling has three (3) bedrooms and one (1) additional bedroom (master bedroom) is being proposed in the addition to the west façade of the dwelling – bringing the total to four (4) bedrooms on subject property. The height of the proposed addition to the dwelling will be 12'; the proposed reconstructed garage will have a height of 14.5'. The septic system will be upgraded to allow the fourth bedroom addition.

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 reconstruction of the detached garage structure and the addition to the rear of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board finds that the nonconforming setback from the garage to the southerly side yard property line will be slightly improved, all other nonconforming setbacks will remain as existing and there will be no new nonconformities created through this special permit. The Board further finds that not only will the character of the neighborhood as well as the property be improved, the utilization and functionality of the dwelling will also be improved for use by residents of said property.

The Board finds through testimony by the applicant's representative that drywells will be installed on subject property to maintain roof runoff. The Board further finds that the plan (submitted and noted below) shows an upgrade to the septic system to allow the fourth bedroom; a reserve area is also shown on the plan. Furthermore, the Board finds that the existing nonconforming shed will remain with no change and the shed is calculated in the lot coverage noted on "Site and Septic Design Plan" submitted and reviewed herein.

The Board finds through testimony by the applicant's representative that the proposed basement (under new addition) will be used for storage and be unfinished. The Board further finds through testimony by the applicant that the garage will not be heated and there is no intent for habitable space to be created within it.

In addition to the above findings, the Board finds that the proposed reconstruction of the detached garage and addition to the dwelling as discussed 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 increase to size of garage and addition to dwelling as there will be one slightly improved nonconforming setback, no new nonconformities created and lot coverage is in compliance with Town Code.

B. The site is suitable for the proposed use as the property is zoned general residence which allows semidetached and two family dwellings, however, the use represented herein is a single-family dwelling use which will remain as such.

C. There will be no impact on traffic flow and safety as there is no change in the location of the driveway. There will be one (1) additional bedroom added to the existing three (3) bedroom dwelling, however, it is anticipated not to effect the normal flow of traffic to and from the 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 upgrade of the septic system to allow the fourth bedroom will be required to be signed off on by the Board of Health prior to issuance of a building permit.

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 not a referral submitted by the Water Department to inform Board of status of water service components.

G. The proposed garage reconstruction and addition 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 reconstructed garage and addition to 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 Potamis 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 Michael T. McDermott and Susan D. McCarthy (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the detached garage and construct an addition creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 71 King Street, Falmouth, MA. This special permit shall be subject to the following conditions:

1. The raze and reconstruction of detached garage, the one-story addition to the dwelling, all setbacks, height of garage and addition to dwelling, lot coverage and use of both structures on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Proposed Addition and Septic System Upgrade 71 King Street in Falmouth, Massachusetts” as drawn by Cape & Islands Engineering consisting of one Sheet 1 of 1 ‘Site and Septic Design Plan’ dated March 14, 2017 with a final revision date of 6/7/2017 and with a Board date ‘received’ stamp of June 8, 2017;
 - “Mike McDermott & Sue McCarthy 71 King St., Falmouth, MA” plans drawn by Longfellow Design-Build consisting of Drawing A100 ‘Proposed Basement Plan’ dated 3/4/2016, Drawing A101 ‘Proposed First Floor Plan’ dated 3/4/2016, Drawing A102 ‘Second Floor Plan’ dated 3/4/2016, Drawing A202 ‘Exterior Elevations’ dated 3/4/2016, Drawing A201 ‘Exterior Elevations’ dated 3/4/2016 – all with a Board date ‘received’ stamp of June 6, 2017; and
 - “Mike McDermott & Sue McCarthy 71 King St., Falmouth, MA” plan drawn by Longfellow Design-Build - Drawing A301 ‘Proposed Detached Garage’ dated 3/4/2016 with a revised date of 6/7/2017 and with a Board date ‘received’ stamp of June 8, 2017.
2. Drywells shall be installed on subject property to maintain stormwater runoff on site. The location of the drywells will be subject to project Engineers’ discretion for maximum retainage on site.
3. The garage shall not have any habitable space.
4. There shall be no more than four (4) bedrooms allowed on subject property.

5. There shall be no bedrooms or sleeping accommodations created within the proposed basement area.
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: **042-17**

APPLICANT/OWNER: **MICHAEL T. McDERMOTT & SUSAN D. McCARTHY of Sudbury, MA**

SUBJECT PROPERTY: **71 King Street, Falmouth, Massachusetts**
Assessor's Map: **Map 47B, Section 01, Parcel 021, 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, 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.