

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 051-17

**APPLICANT/OWNER:** RVK REAL ESTATE LLC of Southborough, MA

**SUBJECT PROPERTY:** 372 Maravista Avenue, Teaticket, Massachusetts  
**Assessor's Map:** Map 46A, Section 08, Parcel 000, Lot 087

**DEED/CERTIFICATE:** Certificate 201024 – LC Plan 4286 - A

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of June 20, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to construct an addition creating a mud room, addition on the north side of existing garage and an addition above garage creating habitable space within the pre-existing non-conforming single-family dwelling on subject property known as 372 Maravista Avenue, 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, Clerk Kimberly Bielan, Member Ed Van Keuren and Associate Robert Dugan (sitting as 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 Michael Borselli, P.E. with Falmouth Engineering, 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**

07/26/2017 A copy of the Notice of Public Hearing with comments from Mr. McDermott of 25 Brockton Street was received and submitted to the file

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

E-mail communications between applicant's representative and staff submitted to file

- 06/22/2017 Applicant's representative submitted a copy of the "Plot Plan" that Building Commissioner Rod Palmer had signed noting that Maravista Avenue will be the front yard and that Brockton and Boston Streets will be side yards pursuant to Section 240-13 "Definitions" – 'yard, front' of the Code of Falmouth – Board date 'received' stamp of June 22, 2017
- 08/03/2017 E-mail from applicant's representative, Mr. Borselli, to Jim McLoughlin, Town Engineer, regarding meeting wherein they discussed replacing trench drain and modifying grade – revised "Plot Plan" (pdf) with a revised date of 8/2/2017 was attached

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

- 06/21/2017 ZBA staff submitted a copy of Special Permit #13-14 for subject property into the file
- 06/21/2017 ZBA staff submitted to the file a copy of an administrative approval for subject property relative to Special Permit #13-14
- 06/22/2017 Referral submitted to the file from Planning Department staff with no comment
- 06/27/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/28/2017 Referral submitted to the file from Director of Assessing that notes the subject property includes lots 57, 58, 87, 88 and 89
- 07/11/2017 Referral submitted to the file from Town Engineering Department with standard comments with a statement: *We will not approve a driveway permit for access to a Town right of way that includes a trench drain for stormwater mitigation; they are prone to clogging and are rarely maintained. We recommend revising the plans to show a driveway that we can approve a permit for. For information only, please note that Maravista Ave has a roadcut moratorium until April 2022.*
- 07/18/2017 Referral submitted to the file from Conservation Commission that states: *Located within flood zone A: does this require meeting base flood elevation 12 per Building Depart for 1' above? Control stormwater on property by installing gutters to drywells and/or trench drain in driveway.*

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

"Plot Plan for #372 Maravista Avenue" prepared for Barnes Custom Builders in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated June 16, 2017, stamped and signed by Gary S. Labrie, P.L.S. and Michael J. Borselli, P.E. and with a Board date 'received' stamp of June 20, 2017; REVISED PLAN dated 8/2/2017 submitted via e-mail on 8/3/2017 (Board date 'received' stamp); and

"Dill – Enge Residence 372 Maravista Avenue, Falmouth, MA 02540" plans drawn by Beatrice Bunker Architecture consisting of Drawing EX-1 through EX-5 dated April 2017 showing existing floor and elevation plans, Drawing 1 'Basement Plan' dated May

1, 2017, Drawing 2 'First Floor Plan' dated May 1, 2017, Drawing 3 'Second Floor Plan' dated May 1, 2017 and Drawing 4 'Elevations' dated May 1, 2017 – all plans have a Board date 'received' stamp of June 20, 2017.

Hearing:

Michael Borselli introduced Beatrice Bunker, the architect for the project in the event the Board has questions. Mr. Borselli explained that the subject property has three front yards and that the Building Commissioner has determined that Maravista is the front yard (plan with signature submitted to the file) and that Boston Street and Brockton Street will be side yards. He reviewed the dwelling noting that it is a four-bedroom dwelling and will remain a four-bedroom and the dwelling will be serviced by Town sewer. He reviewed the nonconforming front yard setback to Maravista Avenue; the addition to the north façade of the garage (towards Boston Street) will be in compliance with the side yard setback requirements. The addition to the garage will create a new entrance for a two-car garage (converting the existing one-car garage. The second story addition – space created above the garage – will be to create a new master bedroom/bathroom. Mr. Borselli reviewed the discussion he had with Town Engineer McLoughlin regarding the trench drain on the proposed driveway off Boston Street (see Engineering referral) and the revised plan (revised August 2, 2017) removing the trench drain and modifying the grades to have driveway pitched to control runoff. He explained that the applicant wants to keep the existing driveway off Maravista Avenue for guest parking. There will be no new nonconformities and the lot coverage will remain in compliance with maximum percentage allowed by Code. The existing basement is unfinished

The Board discussed plans with Mr. Borselli. 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 372 Maravista Avenue contains 12,000 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District and the Search and Rescue Overlay. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition creating a mud room, addition on the north side of the existing garage and a second story addition above the garage to create habitable space within the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure has a nonconforming setback to the front yard property line off Maravista Avenue of 9.7' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage on subject property that consists of Lots 57, 58, 87, 88 and 89 is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed addition to the

existing garage structure will allow for a new entrance to a two-car garage currently existing as a one-car garage (new entrance at side with addition). The existing second story of the dwelling has four (4) bedrooms one (1) bedroom will be relocated to the proposed addition over the existing and proposed garage space to create a new master bedroom and bathroom. The one relocated bedroom will become a study and entrance from the study to a hallway accessing the proposed master bedroom as shown on the plans (Drawing 3 'Second Floor Plan' of architectural plans submitted). There is a small addition between the existing attached garage and the dwelling that will create a mudroom.

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 additions to the pre-existing nonconforming dwelling does not appear to be substantially more detrimental than what currently exists. The Board further finds that the existing nonconforming setback will not be increased and there will no new nonconformities created through the proposed additions. Furthermore, the Board finds that the Building Commissioner designated Maravista Avenue as the front for subject property and thereby allowing the addition to the north side of the garage to have a side yard setback of 16', which is greater than the 10' maximum allowed under Section 240-68 B. of the Code of Falmouth.

The Board further finds that the property is serviced by Town sewer and currently exists as a four-bedroom dwelling according to the plans submitted. The addition to the second floor of the dwelling above the existing and proposed garage space will create a new master bedroom and bathroom. The plans show that one of the existing bedrooms on the second floor will be converted to a study (Drawing 3 of plans submitted) to maintain the count of four (4) bedrooms on subject property.

The Board finds that the project engineer worked with the Town Engineering Department regarding stormwater runoff and revised the "Plot Plan" on August 2, 2017 showing the removal of the trench driveway in the northerly driveway and regarding proposed driveway to pitch onto grass area to maintain said runoff. The Board further finds that the proposed driveway off Boston Street will be an improvement to the safety and flow of traffic to and from the site and will greatly decrease the backing onto Maravista Avenue from the existing driveway. Furthermore, the Board finds through testimony that the applicant is desirous of keeping the existing driveway off Maravista Avenue for guest parking.

The Board finds that the height of the proposed addition will be the same as the existing height of 23.2'. The Board finds through testimony by the applicant's representative that the existing basement is unfinished. Furthermore, the Board finds that the "Plot Plan" submitted and reviewed by the Board does show three (3) proposed drywells on subject property as well as regrading grass area at proposed driveway creating low area to maintain runoff from pitched driveway to low grassy area and not into roadway.

In addition to the above findings, the Board finds that the proposed additions to the pre-existing nonconforming dwelling 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 to the north side of the garage as it will not create a new nonconformity, the existing nonconforming setback will remain as existing

with no increase and the lot coverage will remain below allowed maximum percentages according to Section 240-69 A. of the Code of Falmouth.

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

C. There will be an improvement to the traffic flow and safety on site as a new driveway will be constructed on the north side of the property off Boston Street and the existing driveway off Maravista Avenue will be used for guest parking. There is no increase in the number of bedrooms on subject property so the traffic to and from the site will be substantially the same.

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 serviced by the Town sewer which requires a limit of no more than four (4) bedrooms, unless properties have existed previously with more bedrooms (subject to Board of Health approval).

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 possible updating of water service as the Board received no referral from the Water Department.

G. The proposed additions to the existing 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 Bielan made a motion to Grant the Special Permit with conditions. Member Hurrie 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 RVK Real Estate LLC (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an addition creating a mud room, addition on the north side of existing garage and an addition above garage creating habitable space within the pre-existing non-conforming single-family dwelling on subject property known as 372 Maravista Avenue, Teaticket, MA.

This special permit shall be subject to the following conditions:

1. The addition to the north side of the garage, the small addition between existing garage and dwelling, the second floor addition above garage, all setbacks, lot coverage, proposed

driveway, drainage and use of dwelling structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #372 Maravista Avenue" prepared for Barnes Custom Builders in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated June 16, 2017, stamped and signed by Gary S. Labrie, P.L.S. and Michael J. Borselli, P.E. and with a Board date 'received' stamp of June 20, 2017; REVISED PLAN dated 8/2/2017 submitted via e-mail on 8/3/2017 (Board date 'received' stamp); and
  - "Dill – Enge Residence 372 Maravista Avenue, Falmouth, MA 02540" plans drawn by Beatrice Bunker Architecture consisting of Drawing EX-1 through EX-5 dated April 2017 showing existing floor and elevation plans, Drawing 1 'Basement Plan' dated May 1, 2017, Drawing 2 'First Floor Plan' dated May 1, 2017, Drawing 3 'Second Floor Plan' dated May 1, 2017 and Drawing 4 'Elevations' dated May 1, 2017 – all plans have a Board date 'received' stamp of June 20, 2017.
2. There shall be no more than four (4) bedrooms on subject property.
  3. There shall be no bedrooms or sleeping accommodations created within the basement area of subject dwelling.
  4. 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.
  5. The Applicant shall meet the requirements of the DPW Water Division.
  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 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:       **051-17**

APPLICANT/OWNER:               **RVK REAL ESTATE LLC of Southborough, MA**

SUBJECT PROPERTY:              **372 Maravista Avenue, Teaticket, Massachusetts**  
Assessor's Map:                 **Map 46A, Section 08, Parcel 000, Lot 087**

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**

*10@850am*

**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.