

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 077-17

APPLICANT/OWNER: ROBERT T. NAUMES & STACY C. NAUMES of Boston, MA

SUBJECT PROPERTY: 23 Otis Street, North Falmouth, Massachusetts
Assessor's Map: Map 02A Section 09 Parcel 007 Lot 000

DEED/CERTIFICATE: Certificate 157904 – Land Ct. Plan 19200-A

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 31, 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 an addition over the existing second floor deck creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 23 Otis Street, North 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 October 19, 2017.
4. The public hearing was closed on October 19, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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

10/06/2017 A letter was submitted to the file by William C. Bearce, III and Megan T. Bearce of 26 Otis Street, dated October 3, 2017 stating support of the proposed project

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

08/29/2017 Attorney Klauer submitted, on behalf of the applicant, a letter dated August 29, 2017 along with attachments as application to the Board for proposed project

Letters/Referrals/E-mails from Town Departments

- 08/29/2017 ZBA staff submitted to the file photos of dwelling structures in the general area of subject property for comparison by Board review
- 08/31/2017 Referral submitted to the file from Planning Department staff with no comment
- 09/05/2017 Referral submitted to the file from Director of Assessing with no comment
- 09/06/2017 Referral submitted to the file from Conservation Commission noting: *Contain stormwater on property*
- 09/12/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/03/2017 Referral submitted to the file from Town Engineering Department with standard comments and noted that project must not direct any stormwater runoff to public property, abutters, or right of ways

Plans submitted by Applicant/Applicant's Representative

“Certified Plot Plan” prepared for Robert & Stacy Naumes – 23 Otis Street in Falmouth, MA as drawn on a plan by Cape & Islands Engineering – Sheet 1 of 1 dated August 23, 2017 that is stamped and signed by Matthew C. Costa and with a Board date ‘received’ stamp of August 29, 2017;

“Stacy Naumes 23 Otis Street, North Falmouth, MA” drawn by Longfellow Design-Build – Drawing A0.1 ‘First Floor Demo Plan’ dated 8/23/2017 and Drawing A0.2 ‘Second Floor Demo Plan’ dated 8/23/2017 – both with a Board date ‘received’ stamp of August 29, 2017; and

“Stacy Naumes 23 Otis Street, North Falmouth, MA” drawn by Longfellow Design-Build – Drawing A.00 ‘Cover’ dated 8/23/2017, Drawing A1.1 ‘Proposed First Floor Plan’ dated 8/23/2017, Drawing A1.2 ‘Proposed Second Floor Plan’ dated 8/23/2017, Drawing A2.1 ‘Proposed Elevations’ dated 8/23/2017 and Drawing A2.2 ‘Proposed Elevations’ – all with a Board date ‘received’ stamp of August 29, 2017.

Hearing:

Attorney Klauer reviewed the existing site and the proposed addition to the second floor over the existing deck. The existing dwelling is a two-story structure and has five (5) bedrooms with a nonconforming setback of 6’ to the front property line off Otis Street that requires a 25’ setback, a nonconforming setback of 8’ to the rear property line that requires a 10’ setback and nonconforming lot coverage by structures at 27.3% which exceeds the 20% maximum allowed by right in a residential zone. Attorney Klauer explained that the property with the existing structures existed prior to the zoning change in 2002 where Town meeting voted to change lot coverage by structures from 35% maximum to a 20% maximum. The proposed addition over an existing deck on the second floor does not increase any nonconforming setback or nonconforming lot coverage. The existing height of the structure [34’8”] will remain as existing. The applicant is renovating the second floor to create a new master bedroom and bathroom. The number of bedrooms, through this proposal, will eliminate one (1) bedroom, making this a four-bedroom dwelling.

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 23 Otis Street in North Falmouth contains 7,508 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct an addition over the existing second floor deck to create additional habitable space with the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure (circa 1910) has a nonconforming 6' setback to the front property line off Otis Street that is required to be 25' pursuant to Section 240-68 A. of the Code of Falmouth; a nonconforming setback of 8' to the rear property line that is required to be 10' pursuant to Section 240-68 B. of the Code of Falmouth; and lot coverage by structures is nonconforming at 27.3% which exceeds the 20% maximum allowed by right in a residential zone pursuant to Section 240-69 A. of the Code of Falmouth.

The applicant applied under Section 240-3 C. of the Code of Falmouth as the property/structure is nonconforming and requires a special permit to extend, alter or change a nonconforming structure or use as long as the extension, alteration or change is not substantially more detrimental that what exists.

The Board finds that the proposed change to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there will be no increase to the nonconforming setbacks existing, nor will the nonconforming lot coverage by structures be increased. The Board further finds that the proposed plans will eliminate one of the five (5) existing bedrooms, making the existing dwelling now a four-bedroom dwelling and enhance the functionalization of the dwelling for the residents.

The applicant also applied under Section 240-69 E. of the Code of Falmouth that requires a special permit by the Board to allow lot coverage by structures to exceed 20%, but not to exceed 25%.

The Board finds that the subject property/dwelling as existing exceeds the 25% lot coverage by structures and has been existing as such prior to the 2002 vote by Town meeting to amend the bylaw decreasing the allowance of lot coverage by structures from 35% to the current requirement of 20% under Section 240-69 A. of the Code of Falmouth. The Board further finds that the lot coverage by structures on subject property exceeding the 25% is pre-existing nonconforming and therefore applicable under Section 240-3 C. of the Code of Falmouth.

The Board finds through testimony by the applicant's representative, that there is no intent to locate a shed or accessory structure on subject property.

In addition to the above findings, the Board finds that the proposed second floor addition over the existing deck 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 as the existing dwelling, circa 1910, has nonconforming setbacks to the front and rear property lines that will remain as existing and unchanged; and that

the lot coverage by structures on subject property will remain as existing at 27.3% and will not be increased through the approval of this special permit.

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

C. There will be no impact on traffic flow and safety as there is a decrease in the number of existing bedrooms from five (5) to four (4) in subject dwelling and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be unchanged and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place and will be reviewed by the Board of Health prior to issuance of a building permit. The Board did not receive a referral from the Board of Health on the proposed project represented herein.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. G. The proposed addition 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 project 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 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 Robert T. and Stacy C. Naumes (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct an addition over the existing second floor deck creating habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 23 Otis Street, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The second floor addition over existing deck, all setbacks, lot coverage and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Certified Plot Plan" prepared for Robert & Stacy Naumes – 23 Otis Street in Falmouth, MA as drawn on a plan by Cape & Islands Engineering – Sheet 1 of 1 dated August 23, 2017 that is stamped and signed by Matthew C. Costa and with a Board date 'received' stamp of August 29, 2017;
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2. There shall be no more than four (4) bedrooms on subject property.
 3. There shall be no shed or accessory structure allowed on subject property without further review by the Board of Appeals.
 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:

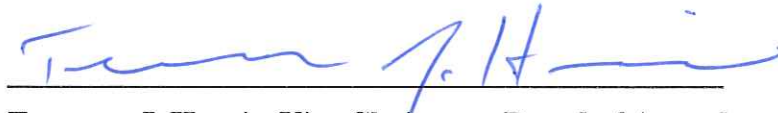
Special Permit Number: **077-17**

Applicant: **ROBERT T. NAUMES and STACY A. NAUMES of Boston, MA**

Subject Property: **23 Otis Street, North Falmouth, Massachusetts
Map 02A, Section 09, Parcel 007, 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

OCT 27 2017

FALMOUTH TOWN CLERK

APC/1135am

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.