

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 075-17
APPLICANT/OWNER: HARRY BOGOSIAN of Santa Clarita, CA
SUBJECT PROPERTY: 8 Alma Road, Falmouth, Massachusetts
Assessor's Map: Map 39 Section 16 Parcel 003 Lot 002
DEED/CERTIFICATE: Book 23028 / Page 286
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 25, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a mudroom and attached garage addition to the pre-existing nonconforming single-family dwelling, exceeding the 20% lot coverage by structures allowed by right on subject property known as 8 Alma Road, 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 Dana Wessell with Northstar Construction, 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)

08/25/2017 Dana Wessell submitted, on behalf of the applicant, an application, letter of authorization for representation, fee, plans and 'Lot Coverage Calculations' for Board review

Letters/Referrals/E-mails from Town Departments

- 08/25/2017 ZBA staff submitted to the file a copy of Special Permit #120-05 for subject property for an addition to increase habitable space on subject property
- 08/28/2017 Referral submitted to the file from the Planning Department staff with no comment
- 08/30/2017 Referral submitted to the file from the Director of Assessing with no comment
- 08/31/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 09/06/2017 Referral submitted to the file from Conservation Commission that states: *Provided stormwater from project is contained on the property – do not need any more run-off contribution towards Rt 28/Main Street where flooding occurs.*
- 09/29/2017 Referral submitted to the file from Town Engineering Department with standard comments and also noted: *We recommend dry wells, rain garden, or other stormwater measure for the roof. Please post house number visible from the street. PLEASE NOTE: There is a road cut moratorium for Alma Rd until April 2021.*

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Plot Plan for #8 Alma Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated May 26, 2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 5/31/2017 and has a Board date ‘received’ stamp of August 25, 2017; and

“Addition to the Bogosian Residence” plan as drawn by Bruce Devlin Designs dated August 2017 showing basement, first floor plan, second floor plan, left elevation, front elevation, right elevation and rear elevation – one sheet – with a Board date ‘received’ stamp of August 25, 2017.

Hearing:

Dana Wessell of Northstar Construction reviewed and explained that the applicant has been a summer resident since 2007 and plans on spending more time here and would like to make some changes to the property. He explained that the only existing nonconformity is the setback of 14’9” to the front property line off Alma Road from the dwelling, that the property is not within a flood plain or any overlay districts and it is connected to the Town sewer. The applicant proposed to add a mudroom and a detached one-car garage with additional space on second floor above addition. The height of the addition will be approximately 18’, same as existing and the addition will be in compliance with setback requirements. The space above the mudroom will be for a bathroom and hallway to the space above the

proposed garage that is for potential space for a master suite down the road, but is proposed at this time as unfinished. He explained that the proposed addition will increase lot coverage by structures from 16.4% to 24.1%. He reviewed the 'Lot Coverage Calculation' sheet he submitted showing properties within 300' of subject property which is one of the smallest lots in the area; ten of the properties have garages and nine properties are non-residential uses (commercial uses along Falmouth Heights Rd) that contain many businesses.

The Board discussed proposed plans with Mr. Wessell, that included the possible removal of the existing shed on site, use of proposed space above garage and if dwelling will remain three (3) bedrooms. Mr. Wessell stated that there is no intent to remove the shed; that the proposed use in the future may be a master suite as the property is Town sewer and four (4) bedrooms are allowed; and that currently there will be only three (3) bedrooms. It was noted that the proposed space being created above the garage is a 'pass-through' room from an existing bedroom, so until closed off and not a 'pass-through' room, it will not meet the criteria of a bedroom.

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 8 Alma Road in Falmouth contains 7,650 square feet of Residential C zoned land that is not located within any overlay district. The subject property was granted a Special Permit, #120-05, in 2005 to construct an addition to enlarge existing kitchen and a master bedroom. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a mudroom and attached garage addition, with space above, to the pre-existing nonconforming single-family dwelling on subject property. The dwelling has a nonconforming setback to the front property line of 14'9". All other setbacks and lot coverage is in compliance with zoning. The existing dwelling has three (3) bedrooms currently and will be attached to Town sewer where they will be allowed four (4) bedrooms. The plans show space on the second floor above the proposed garage and mudroom that will be accessed from an existing bedroom (see plan submitted). The height of the proposed addition will be the same as existing height, which is approximately 18'. Testimony from applicant's representative was that the proposed driveway will be on a slab and the mudroom will have a crawl space. Through the proposed, lot coverage by structures will be increased from 16.7% to 24.1%.

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 mudroom and one-car garage addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists as there will be no increase to the existing nonconforming front yard setback and no new nonconforming setback proposed. The Board further finds that the additional space being created (mudroom and space on second floor), as well as the garage will be an improvement to the utilization and function of the dwelling by its residents. Furthermore, the Board finds that the proposed additions are in keeping with the neighborhood character based on the 'Lot Coverage Calculations' submitted to the file and visual inspection of area.

The Board finds through testimony by the applicant's representative that the subject property is served by Town sewer. The Board further finds through referral by the Engineering Department that there is a moratorium on road cuts for Alma Road; and that plans submitted indicate that the driveway will need to have an expanded curb cut in order to access proposed garage. Furthermore, the Board finds through testimony by the applicant's representative the moratorium on road cuts for Alma Road will not affect the subject property as the utilities are located within the existing driveway and said driveway will be altered on site to accommodate access to proposed garage.

The Board finds that the height of the existing dwelling is 18' and that the proposed addition will match that height. The Board finds that the applicant's representative stated that the space being created on the second floor will be unfinished and unheated, but that there is potential for a master suite in the future. Furthermore, the Board finds that the plans submitted show a three-bedroom dwelling with the new addition to second floor that has a bathroom and unfinished room with access only from existing bedroom ('pass-through').

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to grant a special permit for a property to exceed the 20% maximum lot coverage by structures (Section 240-69 A.) after consideration by the Board of the size and height of proposed structure in comparison to those in the neighborhood, any shadowing on adjacent properties by the proposed structure, any impact on a view or vista from a roadway or any effect of nitrogen on a coastal embayment. The Board considered the removal of the shed to reduce proposed lot coverage, but finds that its location in the rear of the yard, adjacent to a neighboring commercial use, is not detrimental to the neighborhood and improves utilization of the residence for its occupants.

The Board finds through site inspection and review of the plans and "Lot Coverage Calculations" submitted to the file by the applicant's representative that the size and height of the proposed additions to the existing dwelling are in keeping with the size and height of dwellings in the general residential area of subject property; that the proposed addition will not create any shadowing on adjacent property; that there will be no adverse impact on a view or vista from a roadway; and there will be no effect of nitrogen on a coastal embayment through the proposed plans represented herein.

The Board finds through testimony by the applicant's representative that the applicant is amenable to adding drywells to subject property as the intersection of Alma Road and Falmouth Heights Road is prone to flooding during rain events and any mitigation on subject property would be helpful. The Board further finds that drywells will be installed at downspouts on garage in driveway and at the rear of the garage to maintain runoff on site.

In addition to the above findings, the Board finds that the proposed addition to the existing single-family 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 attached mudroom and one-car garage with space above as there will be no increase to the existing nonconforming setback to the front property line and that the proposed addition will not create any new nonconforming setback under Section 240-68 A. and B. of the Code of Falmouth. The lot coverage by structures will be increased beyond the 20% maximum allowed under Section 240-69 A., however, the Board finds the proposed increase allowable as noted above under Section 240-69 E. 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 used as a single-family dwelling through this special permit approval.

C. There will be no impact on traffic flow and safety as the driveway curb cut, if allowed may be extended from where it is existing to allow better access to proposed garage; and the plans show the proposed dwelling is currently remaining a three (3) bedroom dwelling with the possibility of one additional bedroom space within the proposed second floor 'unfinished' space. The property is served by sewer and may be allowed four (4) bedrooms.

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; and there is no impact on any view or vista from the roadway or abutting properties.

E. The subject property is served by Town sewer.

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 service as the Board did not receive a referral from the Water Department on what existing water service line is.

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 mudroom and one-car addition, with space on second floor, 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 Harry Bogosian (herein referred to as Applicant) under Section(s) 240- 3 C. and 240-69 E. of the Code of Falmouth to construct a mudroom and attached garage, with space above, to the pre-existing

nonconforming single-family dwelling on subject property known as 8 Alma Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The mudroom and one-car attached garage addition with space above, setbacks, height of addition, 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:
 - “Plot Plan for #8 Alma Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated May 26, 2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 5/31/2017 and has a Board date ‘received’ stamp of August 25, 2017; and
 - “Addition to the Bogosian Residence” plan as drawn by Bruce Devlin Designs dated August 2017 showing basement, first floor plan, second floor plan, left elevation, front elevation, right elevation and rear elevation – one sheet – with a Board date ‘received’ stamp of August 25, 2017.
2. The applicant shall install downspouts on the garage addition structure and locate drywells at downspouts to contain runoff on site. There shall be at least two drywells in the driveway and one drywell at the rear corner of the garage addition.
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. The Applicant shall meet the requirements of the DPW Water Division.
5. 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.)
6. 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: **075-17**

Applicant: **HARRY BOGOSIAN of Santa Clarita, California**

Subject Property: **8 Alma Road, Falmouth, Massachusetts
Map 39 Section 16 Parcel 003 Lot 002**

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

did 1:27 pm

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.