

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 115-17
APPLICANT/OWNER: PAUL E. LLOYD of Northborough, MA
SUBJECT PROPERTY: 64 Shoreview Avenue, East Falmouth, Massachusetts
Assessor's Map: Map 39 Section 02C Parcel 000 Lot 106
DEED/CERTIFICATE: Book 30474 / Page 167
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 14, 2017 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct an attached garage addition with habitable space above, increasing lot coverage over 20% on subject property known as 64 Shoreview Avenue, East 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 February 15, 2018.
4. The public hearing was closed on February 15, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Alternate Gerald Potamis (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 present at the hearing and 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

02/12/2018 Email letter from Bill Kassner of 68 Shoreview Avenue to ZBA stating no objections to proposed garage addition on subject property

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

None

Letters/Referrals/E-mails from Town Departments

- 12/17/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 12/19/2017 Referral submitted to the file from Planning Department staff with no comment
- 12/21/2017 Referral submitted to the file from Director of Assessing with no comment
- 01/18/2018 Referral submitted to the file from Town Engineering Department with standard comments and noted that drywells are proposed on plan for new roof area
- 02/05/2018 ZBA staff submitted to the file a Lot Coverage/Bulk Sheet with attached photos of homes in the general area noted on the Sheet

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 – Existing Conditions” prepared for Paul Lloyd 64 Shoreview Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated December 13, 2017 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of December 14, 2017;

“Plot Plan – Proposed Addition” prepared for Paul Lloyd 64 Shoreview Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated December 13, 2017 with a revised date of 1/05/18 – plans is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of January 10, 2018;

“Existing Conditions” as drawn by Chris Warner Architect consisting of two (2) pages showing Floor Plan and Full Basement – dated 11/10/2017 and with Board date ‘received’ stamp of December 14, 2017; and

“Preliminary Design – Lloyd Addition 64 Shoreview Ave., Belmar” as drawn by Chris Warner Architect consisting of six (6) sheets showing Elevations, First and 2nd Floor Plans, Dormer Section (garage) and Gable Section – all dated 01/04/2018 and with a Board date ‘received’ stamp of January 10, 2018.

Hearing:

Mr. Lloyd reviewed the proposed 24' x 21' attached garage with an office on the second floor of the proposed garage. He noted that the subject property is 10,086 square feet in size and that all setbacks on the property are in compliance with Town code and that the existing lot coverage by structures currently exists at 17.25%. The proposed garage will increase the lot coverage by structures to 22.28%, which may be allowed by the Board of Appeals through a special permit. He stated that the existing dwelling

has three (3) bedrooms and will remain a three (3) bedroom dwelling through this application. He also informed the Board that the existing shed located at the northwest corner of the property will remain.

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

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

Susan Rafferty of 47 Irving Avenue stated she has no objection to the proposed garage but has a concern with losing a portion of the view from their family room in their dwelling.

Dan Foley of 51 Cooper Road spoke on possibly losing his view of Martha's Vineyard Sound.

In response Mr. Lloyd explained that he did take into consideration views from abutters and came up with the proposed plan

Member Potamis 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 64 Shoreview Avenue in East Falmouth contains 10,086 square feet of Residential B zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to allow lot coverage by structures to exceed the maximum 20% by right in a residential district, but not greater than 25%. There are currently no nonconforming setbacks pursuant to Sections 240-68 A. and B. of the Code of Falmouth; and the lot coverage by structures existing is in compliance with Section 240-69 A. of the Code of Falmouth. The single-family dwelling on subject property is a one-story, three-bedroom dwelling. The proposed garage addition attached to the dwelling with a second floor will have a height of 22.3' and will increase the lot coverage by structures to 22.8%. The second floor of the proposed garage is noted as an 'office' on the plans submitted.

Section 240-69 E. of the Code of Falmouth allows an individual to apply to the Board of Appeals for a special permit to increase lot coverage by structures on a lot from 20% up to, but not to exceed, 25% after the Board takes into consideration if the proposed construction is in keeping with the height and size of structures in the general neighborhood, if there is any shadow effect on an adjacent property from the proposed construction, if the proposed construction impacts a view or vista from a public roadway or if there is any effect of nitrogen on a coastal embayment.

The Board finds that the proposed attached garage with a second level is in keeping within the general neighborhood of subject property as shown on photos submitted to the file attached to the lot coverage calculation sheet. The Board further finds that there is no shadow effect on any adjacent lot as the proposed garage with a height of 22.3', will be constructed on the corner side of the lot (corner of

Shoreview and Irving Road) and more than 60' away from the closest structure on abutting property to the west of subject property. Furthermore the Board finds that the proposed attached garage structure does not adversely impact a view or vista from a roadway and does not have any effect of nitrogen on a coastal embayment.

The Board finds that testimony by neighbor across the street at 47 Irving Road was that a portion of their view will be lost from their family room (only room of dwelling facing west toward the Sound). The Board further finds the abutter at 51 Cooper Road (slightly northeast of subject property) stated possible loss of view of the Sound, based on location of the Cooper Road dwelling, may not be impacted by the proposed garage addition. Furthermore, the Board finds that no view easement to protect a view from either abutter/neighbor was submitted to the file.

The Board finds through testimony by the applicant that he has no intent to use the second level of the proposed garage as a bedroom; his intent is to use it as an office as shown on the plan reviewed by the Board as submitted and noted herein. The Board further finds that there is three (3) bedrooms existing on subject property and that the number of bedrooms will not be increased through this special permit approval.

In addition to the above findings, the Board finds that the proposed attached garage with a second level 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 garage as there will be no nonconforming setbacks created through this construction and that the increase of lot coverage from 17.25% to 22.28% is approved herein as it meets the criteria to be considered by the Board as set forth in Section 240-69 E.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed garage and office is an acceptable accessory use to the existing primary use of a single-family dwelling.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be changed but there does not appear to be any impact on the neighborhood's visual character as there are other houses in the surrounding area that have been improved; and there is no impact on any view or vista from the roadway and no view easement submitted by abutting properties that may be impacted.
- E. The sewage disposal system is not affected by the approval of the proposed garage as represented herein; and the Board of Health will review the building permit application relative to the 'office' space proposed prior to issuance of a building permits.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed garage 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 attached garage with habitable space on second level 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. Motion carried with a 4 – 1 vote (Member Murphy was in opposition to 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 **4 – 1 to Grant the Special Permit** to Paul E. Lloyd (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct an attached garage with habitable space on a second level that increases lot coverage by structure over 20% on subject property known as 64 Shoreview Avenue, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The proposed attached garage with second level, all setbacks, lot coverage, height of proposed garage structure and use of garage and office space above shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plot Plan – Existing Conditions” prepared for Paul Lloyd 64 Shoreview Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated December 13, 2017 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of December 14, 2017;
 - “Plot Plan – Proposed Addition” prepared for Paul Lloyd 64 Shoreview Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. on a plan dated December 13, 2017 with a revised date of 1/05/18 – plans is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of January 10, 2018;
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2. The space above the proposed garage on the second level shall be used as an office as represented to the Board and shall not become a bedroom. There shall be no more than three (3) bedrooms allowed on subject property.
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 three (3) 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: **115-17**

Applicant: **PAUL E. LLOYD of Northborough, MA**

Subject Property: **64 Shoreview Avenue, East Falmouth, Massachusetts
Map 39 Section 02C Parcel 000 Lot 106**

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 1 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

FEB 22 2018

FALMOUTH TOWN CLERK

02:40 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.