

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 120-17

APPLICANT/OWNER: PETER A. PESCOSOLIDO and MARY ANNE PESCOSOLIDO
of Vernon, CT

SUBJECT PROPERTY: 10 Leonard Drive, East Falmouth, Massachusetts
Assessor's Map: Map 29 Section 05 Parcel 009 Lot 017

DEED/CERTIFICATE: Book 27997 / Page 317

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 20, 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 a family room addition to the pre-existing nonconforming single-family dwelling on subject property known as 10 Leonard Drive, 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, Member Paul Murphy and Alternate 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 John Vidal, 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)

None

Letters/Referrals/E-mails from Town Departments

12/29/2017 Referral submitted to the file from Director of Assessing with no comment

01/03/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

01/05/2018 Referral submitted to the file from Planning Department staff with no comment

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” prepared for #10 Leonard Drive East Falmouth, Massachusetts as drawn by Stephen Doyle and Associates dated December 4, 2017 – plan is stamped, signed and dated by Stephen J. Doyle on 12-4-2017 and has a Board date ‘received’ stamp of December 20, 2017; and

“Proposed new Addition for Peter & Maryann Pescosolido” – plan is not authored or dated – plan shows proposed elevation, framing plan, cross section and floor plan and has a Board date ‘received’ stamp of December 20, 2017.

Hearing:

John Vidal, Contractor, reviewed the existing site that has a nonconforming front yard setback of 21.6’ and the proposed 18’ x 18’ family room addition at the rear of the dwelling. Existing dwelling and addition are one-story and the proposed addition is 12’ off side property line so as to be in compliance with required setback. The lot coverage by structures is existing at 13% and will be increased to 13.3%, which is well below the maximum percentage allowed by right.

The Board discussed plans with Mr. Vidal. 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 Murphy 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 10 Leonard Drive in East Falmouth contains 10,578 square feet of Agricultural A zoned land that is located within Childs River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an 18’ x 18’ family room addition to the southwesterly corner (rear) of the existing dwelling on subject property. The existing dwelling has a nonconforming setback to the front property line off Leonard Drive of 21.6’ that requires a 25’ setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth and will remain in compliance with said section through this special permit approval.

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 18' x 18' family room addition to the rear of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there will be no increase to the existing nonconforming front yard setback and the proposed addition is in compliance with side yard setbacks under Section 240-68 B. of the Code of Falmouth. The Board further finds that the addition will slightly increase the lot coverage by structures, but that said coverage will remain in compliance with Section 240-69 A. of the Code of Falmouth. Furthermore, the Board finds that the proposed family room addition will enhance the utilization of the dwelling by its residents.

The Board finds that the proposed addition will be constructed at the southwesterly rear corner of the dwelling and will not be visible from the roadway. The Board further finds that the proposed family room addition will have a 4' cased opening into the exiting living space of subject dwelling; and that said 4' cased opening will remain as shown on the plan with no door installed.

The Board finds that there was no opposition submitted to the file or stated at the hearing through public comment.

In addition to the above findings, the Board finds that the proposed family room addition 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 family room addition (18' x 18') as there will be no increase to the existing nonconforming front yard setback, the proposed addition will be in compliance with side yard setback requirements and the lot coverage will remain in compliance.

B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.

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 unchanged as the addition will be located at the rear of the dwelling and not be seen from the roadway.

E. The sewage disposal system on subject property will be unaffected by the family room addition as represented herein.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. The Applicant will have to contact the Town Water Department regarding updating of water system.

G. The proposed family room 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 addition of a family room addition 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 Murphy 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 Peter A. and Mary Anne Pescosolido (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an 18' x 18' family room addition to the pre-existing nonconforming single-family dwelling on subject property known as 10 Leonard Drive, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The construction of the 18' x 18' family room addition to the dwelling, all setbacks, lot coverage and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan" prepared for #10 Leonard Drive East Falmouth, Massachusetts as drawn by Stephen Doyle and Associates dated December 4, 2017 – plan is stamped, signed and dated by Stephen J. Doyle on 12-4-2017 and has a Board date 'received' stamp of December 20, 2017; and
 - "Proposed new Addition for Peter & Maryann Pescosolido" – plan is not authored or dated – plan shows proposed elevation, framing plan, cross section and floor plan and has a Board date 'received' stamp of December 20, 2017.
2. The applicant shall forever maintain the 4' cased opening from the proposed family room to the existing living space within the dwelling. A door shall not be installed as it would be considered private and meet the criteria of a bedroom which is not approved herein.
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. 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.)
5. 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: **120-17**

Applicant: **PETER A. PESCOSOLIDO and MARY ANNE PESCOSOLIDO
of Vernon, CT**

Subject Property: **10 Leonard Drive, East Falmouth, Massachusetts
Map 29 Section 05 Parcel 009 Lot 017**

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

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.