

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 003-18

APPLICANT/OWNER: ANDREW ASHTON and KELLY ASHTON WELCH of Falmouth, MA

SUBJECT PROPERTY: 82 Jones Road, Falmouth, Massachusetts
Assessor's Map: Map 38 Section 03 Parcel 024 Lot 000

DEED/CERTIFICATE: Book 30015 / Page 137

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 9, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-68 B. and 240-69 E. of the Code of Falmouth to construct an addition creating habitable space to the pre-existing nonconforming single-family dwelling, exceeding 20% lot coverage by structures on subject property known as 82 Jones Road, Falmouth, Massachusetts.
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 March 1, 2018.
4. The public hearing was closed on March 1, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member 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 Joel Kubick, PLS with Holmes and McGrath, 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

03/01/2018 Letter received and submitted to the file from Andrew Gaughan of 80 Jones Road stating that he has no issue with the proposed addition

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

02/06/2018 Email from Joel Kubick of Holmes and McGrath, Inc. in response to ZBA staff question on basement space – both existing crawl space and proposed additional basement space

Letters/Referrals/E-mails from Town Departments

- 01/11/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 01/11/2018 Referral submitted to the file from Water Superintendent with no comment
- 01/16/2018 Referral submitted to the file from Planning Department staff with no comment
- 01/18/2018 Referral submitted to the file from Town Engineering Department with standard comments with a recommendation to add drywells, rain garden or other stormwater measure for the roof

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

Plans prepared for Andrew Ashton and Kelly Ashton Welch for #82 Jones Road drawn by Holmes and McGrath Inc. and consisting of:

- "Plan of Proposed Addition & Sewage Disposal System" Sheet 1 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PLS and Joel R. Kubick, PE with a Board date 'received' stamp of January 8, 2018;
- "Plan of Existing Conditions" Sheet 2 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PLS with a Board date 'received' stamp of January 8, 2018;
- "Construction Details of Proposed Sewage Disposal System" Sheet 3 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PE and with a Board date 'received' stamp of January 8, 2018; and
- "Layout and Profile of Proposed Sewage Disposal System" Sheet 4 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PE and with a Board date 'received' stamp of January 8, 2018.

"Ashton/Welch House 82 Jones Rd., Falmouth, MA" plans drawn by William F. Roslansky Architect consisting of:

- "Existing House" plan dated 6/14/2017 with a Board date 'received' stamp of January 8, 2018;
- "Addition" Sheet A-1 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018;
- "Floor Plans" Sheet A-2 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018;
- "Foundation Plan" Sheet A-3 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018; and
- "Elevations" Sheet A-4 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018.

Hearing:

Joel Kubick reviewed the existing dwelling on subject property that is circa 1929 and is a one-story, three-bedroom dwelling that has a nonconforming setback to the southerly side property line, and a nonconforming setback to the westerly rear property line; there is no frontage on a road for this lot – it is accessed via a driveway through 80 Jones Road. The applicant is proposing to remove the existing deck on the northeasterly façade of the dwelling and construct an addition to allow for expansion of the dwelling and to add a porch and deck onto the

new addition. The addition will have a half second floor that will be used as a loft sitting area that will be open to the floor below. The dwelling is a three bedroom dwelling and will remain a three-bedroom dwelling through the proposed addition. A new septic system is being proposed and will be approved by the Board of Health. Through the addition the lot coverage by structures existing at 18.0%, will be increased to 22.7% which exceeds the 20% maximum by right under Section 240-69 A. of the Code of Falmouth. The applicant is asking for relief under Section 240-69 E. of the Code of Falmouth to exceed the 20% lot coverage by structures.

The Board discussed plans with Joel Kubick, including the proposed basement under proposed addition and if the shed on subject property will be remaining. Mr. Kubick stated that the proposed basement will be unfinished and will be used for laundry facility and storage area. He further stated that the sheds will remain and that the most northeasterly shed can be relocated to meet required setbacks.

Chairman Hurrie 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 Hurrie 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 82 Jones Road in Falmouth contains 9,692 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth as the structures/property is nonconforming to Sections 240-68 A. and B. and 240-67 of the Code of Falmouth; and applied under Section 240-69 E. of the Code of Falmouth as the proposed plan exceeds the 20% maximum of lot coverage by structures under Section 240-69 A. and Section 240-69 E. allows a special permit to be granted under certain considerations to exceed the 20% up to, but not to exceed 25% lot coverage by structures. The Board also finds that the applicant applied under Section 240-68 B. that sets forth the requirement that all side and rear setbacks to property lines from a structure in this residential zoned district shall be 10'. However, the side and rear setbacks exist as nonconforming and thereby the applicant need only to apply under Section 240-3 C. and not Section 240-68 B. of the Code of Falmouth.

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 will not be substantially more detrimental than what currently exists as there is no increase to the existing nonconforming setbacks – the proposed addition will be setback slightly more than the existing nonconforming setback. The Board further finds that the proposed addition as represented will enhance the utilization of the dwelling and property by its residents.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to grant a special permit increasing lot coverage by structures beyond the 20% maximum allowed by right, up to 25% after consideration of the size and height of the proposed addition in relation to the size and height of structures within the general neighborhood, whether the proposed addition will create a shadow effect on adjacent property, whether the proposed addition will impact a view or vista from a roadway or whether the proposed addition will have an effect on nitrogen loading to a coastal embayment.

The Board finds that the proposed addition is a modest addition of a story and a half at the rear of the existing dwelling and has a minimal increase in bulk that will not affect the character of the neighborhood and that there are no structures on the adjacent properties that will be effected from shadowing by the addition proposed. The Board further finds that the proposed addition will not have an adverse impact on a view or vista from a roadway as the structure is off the roadway and not visible from said roadway. Furthermore, the Board finds that the proposed additions will not affect any coastal embayment.

The Board finds through testimony that the two sheds on subject property will remain but that the applicant is amenable to relocating the most northeasterly shed at the rear of subject property so as to make it compliant with a 10' setback. The Board further finds that there is an existing cesspool that will be replaced with an approved Title 5 septic system.

In addition to the above findings, the Board finds that the proposed additions to the pre-existing nonconforming 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 addition as the proposed will not increase the existing nonconforming setbacks and will not create any new nonconforming setbacks; and the lot coverage by structures being increased from 18% to 22.7% is approvable based on the criteria the Board considered 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 residence through this special permit.

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 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 due to the location of subject property.

E. The applicant is removing the existing cesspool and installing a Title 5 septic system that will be required to be approved by the Board of Health prior to installation.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed addition to the 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 to the single-family dwelling 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 Andrew Ashton and Kelly Ashton Welch (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of

Falmouth to construct an addition creating habitable space to the pre-existing nonconforming single-family dwelling, exceeding 20% lot coverages by structures on subject property known as 82 Jones Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The addition (habitable space and new porch and deck) to the dwelling, all setbacks, height of proposed addition, lot coverage and use of the addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

Plans prepared for Andrew Ashton and Kelly Ashton Welch for #82 Jones Road drawn by Holmes and McGrath Inc. and consisting of:

- "Plan of Proposed Addition & Sewage Disposal System" Sheet 1 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PLS and Joel R. Kubick, PE with a Board date 'received stamp of January 8, 2018;
- "Plan of Existing Conditions" Sheet 2 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PLS with a Board date 'received' stamp of January 8, 2018;
- "Construction Details of Proposed Sewage Disposal System" Sheet 3 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PE and with a Board date 'received' stamp of January 8, 2018; and
- "Layout and Profile of Proposed Sewage Disposal System" Sheet 4 of 4 dated January 4, 2018 – stamped and signed by Joel R. Kubick, PE and with a Board date 'received' stamp of January 8, 2018.

"Ashton/Welch House 82 Jones Rd., Falmouth, MA" plans drawn by William F. Roslansky Architect consisting of:

- "Existing House" plan dated 6/14/2017 with a Board date 'received' stamp of January 8, 2018;
- "Addition" Sheet A-1 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018;
- "Floor Plans" Sheet A-2 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018;
- "Foundation Plan" Sheet A-3 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018; and
- "Elevations" Sheet A-4 with a final revision date of 12/28/2017 and a Board date 'received' stamp of January 8, 2018.

2. The applicant shall relocate the most northeasterly shed on subject property so that it is in compliance with a required 10' setback.
3. The existing cesspool shall be removed and a Title V septic system approved by the Board of Health shall be installed prior to final sign-off by the Building Department and/or the Board of Appeals.
4. There shall be no more than three (3) bedrooms allowed on subject property through this special permit approval.
5. The applicant shall submit to the Board of Appeals an 'as-built' plan post construction (showing all appurtenances, including decks and porch) verifying all setbacks, lot coverage and relocation of the shed as required herein. The 'as-built' shall be submitted to the Board of Appeals prior to the final sign-off by the Building Department and/or Board of Appeals and prior to any occupancy of the approved addition herein.

6. 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.
7. 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.)
8. 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: **003-18**

Applicant: **ANDREW ASHTON and KELLY ASHTON WELCH of Falmouth, MA**

Subject Property: **82 Jones Road, Falmouth, Massachusetts
Map 38 Section 03 Parcel 024 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, Acting Chairman, Board of Appeals

RECEIVED

MAR - 9 2018

FALMOUTH TOWN CLERK

APC 120 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.