

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 038-18

APPLICANT/OWNER: WILLIAM G. PATTERSON TRUSTEE and SUSAN B. PATTERSON,
TRUSTEE of The 21 Montgomery Court Revocable Trust of Littleton, MA

SUBJECT PROPERTY: 21 Montgomery Court, Falmouth, Massachusetts
Assessor's Map: Map 46B Section 21 Parcel 029 Lot 019

DEED/CERTIFICATE: Book 29143 / Page 68

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 14, 2018, 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 an attached garage with deck and second story addition, exceeding the 20% lot coverage by structures on subject property known as 21 Montgomery Court, 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 June 21, 2018.
4. The public hearing was closed on June 21, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren and Alternates Gerald Potamis and Robert Dugan, sitting as voting members, 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 Michael Duffany of Duffany Builders, 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

- 05/16/2018 Referral submitted to the file by Planning Department staff with no comment
- 05/17/2018 Referral submitted to the file by Falmouth Fire Rescue Department with no comment
- 05/17/2018 Referral submitted to the file from Water Department with no comment
- 05/17/2018 Referral submitted to the file from Director of Assessing that states: *includes lots 17 and 19*

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

“Site Plan of Land” prepared for William and Susan Patterson showing the proposed additions as drawn by John Doyle, PLS dated May 11, 2018 – plan is stamped and signed by John P. Doyle III, PLS and has a Board date ‘received’ stamp of May 14, 2018; and

“Patterson Residence Addition and Renovation 21 Montgomery Ct. Falmouth, MA” plans as drawn by GF Architecture and consist of: Drawing A101 ‘Proposed Main Level Floor Plan’ with a revised date of 4/30/18; Drawing A102 ‘Proposed Upper Level Floor Plan’ with a revised date of 4/30/18; Drawing A201 ‘Proposed Exterior Elevations’ with a revised date of 4/30/2018; Drawing A202 ‘Proposed Exterior Elevations with a revised date of 4/30/2018; Drawing EX101 ‘Existing Main Level Floor Plan’ with a revised date of 4/27/2018; and Drawing EX201 ‘Existing Elevations’ with a revised date of 4/30/2018 – all Drawings have a Board date ‘received’ stamp of May 14, 2018.

Hearing:

Michael Duffany reviewed the existing 7,533 square foot subject property that has a ranch style four-bedroom dwelling and the plans to add an attached two-story garage and a second story to the dwelling, circa 1956. He explained that the property is located within the AE 13 Flood zone which requires the additions and renovations to be completed in phases. The garage addition with deck and stairway to grade from second level will be the first phase of the construction. The stairway is needed for access to the second level so that the applicant can utilize the space as a craft room (noted as ‘bonus room’ on Drawing A102) as the second phase of the plan will be the addition of a second floor to the dwelling. Mr. Duffany explained that he is applying to the Board for the entire project so that the applicant will not have to come back two (2) or three (3) times (possibly) for modifications. He noted that there is no increase in the number of bedrooms – it will remain a four-bedroom dwelling and the property will be attached to Town sewer.

The Board discussed plans with Mr. Duffany and stated their concerns regarding the use of the room and full bathroom within the space above the garage – asking what the need for a full bathroom is. Mr. Duffany stated that it saves the resident from having to go outside and down to the residence for use of a

bathroom. Mr. Duffany discussed with the members and the members and Mr. Duffany came to a consensus that a 'powder room' would be acceptable.

The Board members discussed the lot coverage increase from 17.16% to 24.87%. It was noted that the shed shown on the plan as "Future Shed" was not included in the lot coverage. Board informed Mr. Duffany that it would not be allowed as the lot coverage is being increased to just below the maximum 25% allowed by a special permit under Section 240-69 E. of the Code of Falmouth.

Chairman Foreman asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Potamis 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 21 Montgomery Court contains 7,533 square feet of Residential C zoned land that is not located within any overlay districts. The existing dwelling on subject property has a nonconforming setback to the front property line off Montgomery Court of 7.6' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage on subject property is currently in compliance with Section 240-69 A. of the Code of Falmouth. The applicant applied under Section(s) 240-3 C. (pre-existing nonconforming) and Section 240-69 E. (increase of lot coverage by structures up to 25%) of the Code of Falmouth to construct of a two-story garage structure with stairs from second floor to grade and to construct a second story over existing first floor. The existing dwelling is a ranch-style four-bedroom dwelling with no garage and an unfinished basement. The plan is to construct, in phases due to the property being located within the AE13 flood zone, the two-story garage addition first and then after a year of completion construct a second story to the dwelling itself. The dwelling will remain a four-bedroom dwelling through this special permit approval. The Board discussed with the applicant's representative the use of the 'bonus room' above the proposed garage and the full bathroom shown on the plan submitted.

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 construction of a two-story garage and the addition of a second floor to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the nonconforming setback to the front property line of 7.6' will be improved to an 11.0' setback and there will be no new nonconforming setbacks created through this special permit. The Board further finds that the additions discussed and represented herein will be an enhancement to the utilization of the dwelling and property by its occupants. Furthermore, the Board finds that there are

currently four (4) bedrooms within the dwelling and there will be only four (4) bedrooms remaining on subject property through this special permit.

The Board finds that the subject property is within the Town sewer district.

The Board finds that the "Site Plan of Land" submitted and reviewed by the Board shows a "Future Shed" that is not included within the lot coverage calculations by the Land Surveyor. The Board further finds through testimony by the applicant's representative, that there is no intent to locate a shed on subject property. Furthermore, the Board finds that a shed would not be possible to have on the subject property as the proposed plans reviewed and discussed herein will increase the lot coverage by structures to 24.87% which is just slightly below the maximum percentage allowed through a special permit.

The Board finds through testimony by the applicant's representative that the applicant is amenable to convert the proposed full bathroom within the 'bonus room' shown on Drawing A102 'Proposed Upper Level Floor Plan' to a powder room, thereby eliminating a bathtub and/or shower. The Board further finds that upon completion of the second or third phase of the second floor addition to the dwelling the 'bonus room' (to be used as a craft room according to representative's testimony) may meet the criteria of a fifth bedroom and a determination by this Board will be that a deed restriction limiting the dwelling to a four-bedroom dwelling will be required.

In addition to the above findings, the Board finds that the proposed additions to the existing single-family dwelling to be completed in phases, 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 additions to the existing dwelling as the proposed plan will improve the nonconforming setback to the front property line, it will not create any new nonconforming setbacks and the increase in the lot coverage by structures is approved as required through a 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 this special permit approval.

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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The property is located within the Town sewer district. At the time of the hearing there was no verification that the property was attached to the sewer.

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

G. The proposed additions 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 plans for the pre-existing nonconforming 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 Hurrie made a motion to Grant the Special Permit with conditions. Member Potamis seconded the motion. Motion carried 4 to 1 with Potamis in opposition.

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 William G. and Susan B. Patterson, Trustees (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct an attached garage structure with a second floor and to construct a second story to the pre-existing nonconforming single-family dwelling on subject property known as 21 Montgomery Court, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The addition of a two-story garage, the addition of a second story to the existing dwelling, all setbacks, lot coverage and use of rooms within the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Site Plan of Land” prepared for William and Susan Patterson showing the proposed additions as drawn by John Doyle, PLS dated May 11, 2018 – plan is stamped and signed by John P. Doyle III, PLS and has a Board date ‘received’ stamp of May 14, 2018; and
 - “Patterson Residence Addition and Renovation 21 Montgomery Ct. Falmouth, MA” plans as drawn by GF Architecture and consist of: Drawing A101 ‘Proposed Main Level Floor Plan’ with a revised date of 4/30/18; Drawing A102 ‘Proposed Upper Level Floor Plan’ with a revised date of 4/30/18; Drawing A201 ‘Proposed Exterior Elevations’ with a revised date of 4/30/2018; Drawing A202 ‘Proposed Exterior Elevations with a revised date of 4/30/2018; Drawing EX101 ‘Existing Main Level Floor Plan’ with a revised date of 4/27/2018; and Drawing EX201 ‘Existing Elevations’ with a revised date of 4/30/2018 – all Drawings have a Board date ‘received’ stamp of May 14, 2018.
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. The applicant shall submit to the Board of Appeals for review and approval, a draft Deed Restriction limiting the use on subject property to that of a four-bedroom dwelling. Upon approval by the Board of Appeals and Town Counsel, the applicant shall file the Deed Restriction with a copy of said filing submitted to the Board of Appeals prior to the final inspection by the Building Department and the Zoning Administrator.
4. The applicant shall convert the full bathroom shown within the ‘bonus room’ on Drawing A102, to a powder room. There shall be no bathtub and/or shower located within the ‘bonus room’.

5. 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.
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 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: **038-18**

Applicant: **WILLIAM G. PATTERSON, TRUSTEE and SUSAN B. PATTERSON, TRUSTEE
of The 21 Montgomery Court Revocable Trust**

Subject Property: **21 Montgomery Court, Falmouth, Massachusetts
Map 46B Section 21 Parcel 029 Lot 019**

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

JUL - 3 2018

FALMOUTH TOWN CLERK

apc800am

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.