

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 057-18

APPLICANT/OWNER: PIOTR BUCZEK and JOANNA BUCZEK of Wayland, MA

SUBJECT PROPERTY: 40 Frazar Road, West Falmouth, Massachusetts
Assessor's Map: Map 24 Section 13 Parcel 003B Lot 000B

DEED/CERTIFICATE: Book 30696 / Page 131

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 3, 2018, 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 an 11' x 20' two-story addition to the pre-existing nonconforming two-story single-family dwelling on subject property known as 40 Frazar Road, West 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 August 16, 2018.
4. The public hearing was closed on August 16, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, 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 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

None

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

None

Letters/Referrals/E-mails from Town Departments

- 07/05/2018 Referral submitted to the file from the Planning Department staff with no comment
- 07/09/2018 Referral submitted to the file from the Water Department with no comment
- 07/10/2018 Referral submitted to the file from Director of Assessing with no comment
- 07/17/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/30/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof
- 08/03/2018 Referral submitted to the file from Board of Health Agent that states: *3 bedroom septic (388 GPD) installed 1997 – okay for 3 bedrooms.*
- 08/06/2018 Referral submitted to the file from Conservation Commission Agent 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 of Land” prepared for #40 Frazar Road West Falmouth, Massachusetts as drawn by Stephen Doyle and Associates – plans is dated June 28, 2018 and is stamped, signed and dated on 7/2/2018 by Stephen J. Doyle, PLS and has a Board date ‘received’ stamp of July 3, 2018;

“Existing Conditions Buczek Addition/Renovation 40 Frazar Rd., West Falmouth” as drawn by Chris Warner Architect – plans dated 3/23/2018 and consists of seven (7) 8.5” x 11” plans showing elevations, floor plans (2 floors) and existing setback – all Existing Plans have a Board date ‘received’ stamp of July 3, 2018; and

“Preliminary Design Buczek Addition/Renovation 40 Frazar Rd., West Falmouth” as drawn by Chris Warner Architect – plans dated 3/25/2018 and consists of eight (8) 8.5” x 11” plans showing elevations, basement plan, first and second floor plans and proposed setback (portion of site plan) – all Proposed Plans have a Board date ‘received’ stamp of July 3, 2018.

Hearing:

Mr. Buczek was present and reviewed the existing site with a two-bedroom dwelling and the proposed plans to construct and 11’ x 20’ two-story addition and to construct minor additions to the second floor to ‘square’ it off. The addition will allow for the existing bedroom on the second floor to be increased to create a master bedroom and to add a bedroom in the lower level, bringing the total number of bedrooms

subject property to three (3). Mr. Buczek informed the Board that he has an existing septic system that has a capacity for three (3) bedrooms. The proposed addition will be constructed with a setback of 13' from the front property line which is further away from the front property than the existing nonconforming stairs with a setback of 8.7'. The stairs will be removed to accommodate the proposed addition. The height of the dwelling will be increased from 19' to 22'.

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

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

Member Foreman made a motion to close the hearing. Member Bielan 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 40 Frazar Road in West Falmouth contains 41,448 square feet of Residential B zoned land that is located within the West Falmouth Harbor Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C of the Code of Falmouth to construct an 11' x 20' two-story addition and minor additions to second floor of the pre-existing nonconforming two-story single-family dwelling on subject property. The existing dwelling has a nonconforming setback to the front property line off Frazar Road of 8.7' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the setbacks to the side and rear property lines by structures on subject property are in compliance with Section 240-68 B. of the Code of Falmouth. The lot coverage on said property is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed additions to the existing single-family dwelling is to enhance and improve the existing living space and will increase the bedroom count from two (2) existing to three (3) as proposed. There are no new non-conformities proposed or requested.

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 two-story addition and addition to existing second floor of the pre-existing nonconforming two-story single-family dwelling will not be substantially more detrimental than what currently exists as the nonconforming front yard setback will be improved from 8.7' to 11.0' and lot coverage on subject property will remain in compliance with Section 240-69 A. of the Code of Falmouth. The Board further finds that the proposed addition will enhance and greatly improve the utilization of living space for the occupants of the dwelling.

The Board finds through submission of a referral from the Board of Health Agent, that there is no concern of the increase of bedrooms from two (2) to three (3) as proposed herein. The Board further

finds through the referral submitted from the Board of Health that there is an existing septic system with capacity for a three-bedroom dwelling.

In addition to the above findings, the Board finds that the proposed 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 two-story addition as it will not increase the existing nonconforming front setback, it will not create any new nonconformity and the property will remain in compliance with Section 240-69 A. (lot coverage) of the Code of Falmouth through this special permit approval.

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 due to the increase of bedrooms from the two (2) existing to a count of three (3) proposed on site; 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.

E. The sewage disposal system is in place and referenced by the Board of Health Agent in a referral submitted to the file as adequate for proposed addition(s).

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 two-story addition to the existing two-story dwelling structure 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 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 Piotr & Joanna Buczek (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an 11' x 20' two-story addition and minor second story addition to the pre-existing nonconforming single-family dwelling on subject property known as 40 Frazar Road, West Falmouth. This special permit shall be subject to the following conditions:

1. The 11' x 20' two-story addition and addition to existing second floor, all setbacks, lot coverage, height of dwelling and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan of Land" prepared for #40 Frazar Road West Falmouth, Massachusetts as drawn by Stephen Doyle and Associates – plans is dated June 28, 2018 and is stamped, signed and dated on 7/2/2018 by Stephen J. Doyle, PLS and has a Board date 'received' stamp of July 3, 2018;
 - "Existing Conditions Buczek Addition/Renovation 40 Frazar Rd., West Falmouth" as drawn by Chris Warner Architect – plans dated 3/23/2018 and consists of seven (7) 8.5" x 11" plans showing elevations, floor plans (2 floors) and existing setback – all Existing Plans have a Board date 'received' stamp of July 3, 2018 (note: existing lower level plan showing one bedroom is not shown); and
 - "Preliminary Design Buczek Addition/Renovation 40 Frazar Rd., West Falmouth" as drawn by Chris Warner Architect – plans dated 3/25/2018 and consists of eight (8) 8.5" x 11" plans showing elevations, basement plan, first and second floor plans and proposed setback (portion of site plan) – all Proposed Plans have a Board date 'received' stamp of July 3, 2018.
2. 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. 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: **057-18**

Applicant/Owner: **PIOTR BUCZEK & JOANNA BUCZEK of Wayland, MA**

Subject Property: **40 Frazar Road, West Falmouth, Massachusetts**

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 Hurrie, Chairman, Board of Appeals

RECEIVED

AUG 23 2018

FALMOUTH TOWN CLERK

08:05 am

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.