

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 058-18

APPLICANT/OWNER: HERBERT LANDSMAN, JR and CYNTHIA R. LANDSMAN,
TRUSTEES of FOUR CIRCLE DRIVE REALTY TRUST
of Sudbury, MA

SUBJECT PROPERTY: 4 Circle Drive, North Falmouth, Massachusetts
Assessor's Map: Map 02A Section 11 Parcel 007 Lot 000

DEED/CERTIFICATE: Book 30507 / Page 0125

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 16, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 of the Code of Falmouth to rebuild the front porch and construct an addition to the second floor of the pre-existing nonconforming single-family dwelling on subject property known as 4 Circle Drive, North 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 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 represented at the hearing by Architect Gregory Jones 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

08/08/2018 E-mail letter submitted to the file from Sheila Brady of 218 County Road dated August 8, 2018 wherein she states support of the proposed plans.

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

07/16/2018 Applicant's representative (Greg Jones) submitted photos of subject property and

surrounding neighborhood submitted July 16, 2018

Letters/Referrals/E-mails from Town Departments

- 07/17/2018 Referral submitted to the file by the Planning Department staff with no comments
- 07/18/2018 Email submitted to the file from the Wastewater Superintendent noting that property is not on Town sewer
- 07/19/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/19/2018 Referral submitted to the file from the Director of Assessing noting: *Includes parcel 7 and 7A*
- 07/20/2018 Referral submitted to the file from the Water Department with no comment
- 08/03/2018 Referral submitted to the file from Board of Health Agent that states: *No increase in bedroom # remains 5. Attic space not to be used as a bedroom.*
- 08/06/2018 Referral submitted to the file from Conservation Commission Agent that states: *Requires filing w/Falmouth Conservation Commission for construction in FWR Velocity Zone.*
- 08/14/2018 Referral submitted to the file from Town Engineering Department with standard comments and note that no stormwater runoff shall be directed to abutting property(s), public property or right of ways

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 Rebuild Porch & Steps for 4 Circle Drive Falmouth, Mass.” As drawn by Warwick & Associates Inc. on a plan dated 3/12/2018 with a revision date of 7/12/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 7/12/2018; and

“Proposed Renovations 4 Circle Drive North Falmouth Massachusetts” as drawn by Gregory Jones – Architect consisting of:

- Drawing EX-01 ‘Existing Basement and First Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing EX-02 ‘Existing Second Floor and Attic Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing EX-03 ‘Existing Elevations’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing A-01 ‘proposed Basement and First Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;

- Drawing A-02 'Proposed Second and Attic Floor Plans' dated July 8, 2018 with a Board date 'received' stamp of July 16, 2018; and
- Drawing A-03 'Proposed Exterior Elevations' dated July 8, 2018 with a Board date 'received' stamp of July 16, 2018.

Hearing:

Greg Jones, the project architect, was present to review the existing site with a five-bedroom, two-story dwelling and proposed addition to the pre-existing nonconforming dwelling on subject property. He reviewed the existing nonconforming setbacks noting that the one at the northwest corner of existing porch (rear) encroaches abutting lot by .14' and will be improved with a 1' setback; the front of the structure has an existing deck that is .17' to the easterly side yard property line; an existing stairway on the east side of the existing rear porch has a setback of 3.3' – this stairway will be eliminated through the reconstruction of the rear porch making it less nonconforming than existing. The plan is to add onto the second floor (existing roof area on the south façade above garage) to create a new bedroom and convert Bedroom #1 (shown on Existing Floor plans) into a full bathroom and laundry facility; and to add a deck over the existing roof line over the first floor shown on the Existing North Elevation; and to renovate existing rear porch to make it less nonconforming with setbacks. The ridge height of the proposed addition to the second floor will be below existing ridge height. The dwelling will remain a five-bedroom dwelling.

The Board discussed plans with Mr. Jones. 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 4 Circle Drive in North Falmouth contains 6,915 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. and 240-69 of the Code of Falmouth to construct an addition to the existing second floor to create a new bedroom space, eliminate an existing landing and stairway on the northeasterly corner of dwelling and renovate existing porch to eliminate encroachment on abutting property and make less nonconforming. The existing dwelling is a two-story, five-bedroom dwelling with a nonconforming setback from the structure to the front property line of 9.6' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth, nonconforming side yard setbacks to the west and east property lines of 1' or less that require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth and lot coverage by structures in nonconforming as it exceeds the 20% maximum allowed in this residential district under Section 240-69 A. of the Code of Falmouth. The proposed addition to

create a new bedroom space will not increase the bedroom count as an existing bedroom shown as Bedroom #1 on Existing Floor Plans – Drawing EX-02 will be converted to a bathroom and laundry room as shown on Drawing A-02 of Proposed Floor Plans. The lot coverage on subject property is nonconforming at 21.5% and will be reduced to 21.2% through the renovation of the rear porch area and the elimination of the stairs at the northeast corner of the dwelling. One setback will be slightly improved with removal of encroachment of porch at the northwest corner of the dwelling. The 0.17' setback to the easterly side property line will remain the same and not be increased and the 9.6' setback to the front property line will remain as existing.

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 addition to the existing second floor (above garage), renovation of rear porch, elimination of stairway at northeasterly corner of dwelling and renovation of second floor to relocate a bedroom within the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the plan includes improving the northwesterly side yard setback to eliminate encroachment on abutting property, removing the stairway on the northeasterly corner of the dwelling eliminating a 3.3' setback to the side property line, not increasing the nonconforming setbacks at the front of the dwelling on the southeasterly side and slightly reducing the nonconforming lot coverage of 21.5% to 21.2%. The Board further finds that the shape of the lot is unique and the applicant has taken into consideration the uniqueness of the shape to improve the nonconformities.

Section 240-69 of the Code of Falmouth requires that properties located in certain areas have a maximum lot coverage by structures and structures parking and paving – in this case a residential zoned district has a maximum of 20% by structures and a maximum of 40% by structures, parking and paving. Section 240-69 E. of the Code of Falmouth allows lot coverage by structures in certain zoning districts to exceed the 20% maximum up to, but not to exceed, 25% through special permit approval by the Board of Appeals.

The Board finds in this application that the lot coverage by structures has existing as nonconforming for many years, most likely prior to the bylaw change in 2002 wherein lot coverage by structures maximum in this zoning district was 35% and reduced to 20% by a Town Meeting vote. The Board further finds that the proposed plans slightly decrease the nonconforming lot coverage by structures from 21.5% to 22.1%. Furthermore, the Board finds that the proposed addition to the second story of the dwelling does not substantially increase the bulk of the dwelling (Section 240-69 E. of the Code of Falmouth) and it does not have a negative impact on the character of the neighborhood (see photos submitted to the file by the applicant's representative of the surrounding neighborhood date stamped July 16, 2018).

The Board finds through testimony by the applicant's representative and by plans submitted to the file that the dwelling will remain a five-bedroom dwelling with no increase in bedroom count. The Board further finds that based on testimony by the applicant's representative and by plans submitted to the file that the proposed attic space will be for storage and mechanical utilities and not have any habitable space within it. Furthermore, the Board finds that there will be no bedrooms created within the basement space shown on both Existing Floor Plans and Proposed Floor Plans noted herein.

In addition to the above findings, the Board finds that the proposed addition and renovations as represented herein 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 project as there is no new nonconformities proposed, there is slight improvement to the existing nonconforming setbacks at the west and east side of the dwelling – no increase to the existing nonconformities and that lot coverage by structures will be slightly improved.
- B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as 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 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 signed off as a five (5) bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling reconstruction 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 additions, renovations and improvements 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 Foreman made a motion to Grant the Special Permit with conditions. Member Bielan 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 Herbert Landsman, Jr. and Cynthia R. Landsman, Trustees (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 of the Code of Falmouth to rebuild the existing porch and construct an addition to the second floor of the pre-existing nonconforming single-family dwelling on subject property known as 4 Circle Drive, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The additions, renovations, site improvements, lot coverage, setbacks, height of proposed addition and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Plot Plan Rebuild Porch & Steps for 4 Circle Drive Falmouth, Mass.” As drawn by Warwick & Associates Inc. on a plan dated 3/12/2018 with a revision date of 7/12/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 7/12/2018; and

“Proposed Renovations 4 Circle Drive North Falmouth Massachusetts” as drawn by Gregory Jones – Architect consisting of:

- Drawing EX-01 ‘Existing Basement and First Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing EX-02 ‘Existing Second Floor and Attic Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing EX-03 ‘Existing Elevations’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing A-01 ‘proposed Basement and First Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018;
- Drawing A-02 ‘Proposed Second and Attic Floor Plans’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018; and
- Drawing A-03 ‘Proposed Exterior Elevations’ dated July 8, 2018 with a Board date ‘received’ stamp of July 16, 2018.

2. There shall be no more than five (5) bedrooms allowed on subject property.
3. There shall be no shed or other accessory structure located on subject property without prior approval from the Board of Appeals.
4. There shall be no habitable space created within the attic space of the dwelling represented herein.
5. There shall be no bedroom created within the basement of subject dwelling.
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: **058-18**

Applicant/Owner: **HERBERT LANDSMAN, JR. and CYNTHIA R. LANDSMAN, TRUSTEES
OF THE FOUR CIRCLE DRIVE REALTY TRUST
of Sudbury, Massachusetts**

Subject Property: **4 Circle Drive, North Falmouth, Massachusetts
Map 02A Section 11 Parcel 007 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 Hurrie, Chairman, Board of Appeals

RECEIVED

AUG 27 2018

FALMOUTH TOWN CLERK

ap 4:00 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.