

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

SPECIAL PERMIT NO: 060-18

APPLICANT/OWNER: THOMAS J. NOVITSKY and CONSTANCE E. NOVITSKY
of Teaticket, MA

SUBJECT PROPERTY: 24 Perch Pond Circle, Teaticket, Massachusetts
Assessor's Map: Map 34 Section 03 Parcel 009M Lot 006

DEED/CERTIFICATE: Book 2949 / Page 125

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 17, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section 240-3 C. of the Code of Falmouth to construct a second floor to the existing attached garage on subject property known as 24 Perch Pond Circle, Teaticket, 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 September 6, 2018.
4. The public hearing was closed on September 6, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy and Associates 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 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

07/18/2018 Email in response to request for referral submitted to the file from Amy Lowell, Wastewater Superintendent that notes subject property not on 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 Director of Assessing with no comment

07/20/2018 Referral submitted to the file from Town Water Department with no comment

07/20/2018 Referral submitted to the file from Planning Department staff with no comment

08/03/2018 Referral submitted to the file from Board of Health Agent that states: *Area above garage must not be used for sleeping purposes. An increase in bedroom # with the current septic system not allowed unless applicant can show enough capacity in the existing system.*

08/10/2018 Referral submitted to the file from Conservation Commission with no comment

08/14/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation for the applicant to add drywells, rain garden or other stormwater measure for the new roofline

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen, Wastewater Department and Water Department

Plans submitted by Applicant/Applicant's Representative

Hand drawn existing floor plans – first and second floor with a Board date ‘received’ stamp of July 17, 2018 (2 pages 8.5 x 11);

“Novitsky Residence 24 Perch Pond Falmouth, MA” architectural plans as drawn by David McLean Architectural Design Studio consisting of Drawings 1 of 7 through 6 of 7 showing Floor Plans, Elevations, Cross Sections and Framing – all drawings are dated 4/18/2018 and have a Board date ‘received’ stamp of July 17, 2018; and

“Plot Plan” for 24 Perch Pond Circle in Falmouth, Massachusetts as drawn by Cape & Islands Engineering dated June 11, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of July 17, 2018.

Hearing:

Mr. Novitsky (applicant) explained that he is proposing to increase the height of the existing garage to allow for a second story above garage to use as storage only. He explained there would be electricity but no heat installed in the storage area. In response to the referral from Engineering, Mr. Novitsky said he would be amenable to installing additional drywell(s). The garage will be insulated so as to meet fire code with space above and attached to dwelling, but that the use of the existing garage will be solely for storage of car or personal goods only. The addition will not be used for habitable space.

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

Chairman Hurrie asked for any public comment in support or opposition of the proposed project.

Robert Ottaviano of 33 Perch Pond Circle asked about the circular stairway from garage to storage and remarked how hard it would be to get items to storage area.

Mr. Novitsky stated that the exterior barn type door on proposed second floor is a functioning door and will be used to store larger items such as kayaks, etc.

Member Potamis made a motion to close the hearing. Member Murphy 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 24 Perch Pond Circle in Teaticket contains 10,394 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to alter the pre-existing nonconforming dwelling that has a nonconforming setback to the side yard property line of 9.0' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth and the lot coverage by structures is nonconforming at 20.06% as it exceeds the 20% maximum allowed in a Residential C zoned district according to Section 240-69 A. of the Code of Falmouth. The proposed addition of a second story to the existing attached garage will not increase the existing footprint of the dwelling/garage structure and therefore will not increase the nonconforming lot coverage by structures. The addition will not increase the nonconforming setback of 9.0' to the westerly side yard property line and will not create any new nonconforming setback. The proposed second floor addition will be for storage only with electric and no heat.

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 addition of a second floor to the existing garage that is attached to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the existing nonconformities on subject property (side yard setback and lot coverage by structures) will not be increased and no new nonconformities will be created. The Board further finds through testimony by the applicant that there is no intent to use the proposed storage area above the garage as habitable space; and that the existing garage space will continue to be used solely as a garage and for storage with no habitable space. Furthermore, the Board finds that there will be no increase of bedrooms through this proposal and that the bedroom count will remain as four (4) (it is noted on existing plan that there is an office space on the first floor that meets the criteria as a fourth bedroom).

The Board finds through testimony by the applicant that he is proposing to upgrade the existing gutters on the dwelling and that they will carry over onto the proposed second floor of the garage. The Board further finds that the applicant is amenable, per testimony, to add drywells – one at the northwest corner of the garage and one at the southwest corner of the garage in order to maintain stormwater runoff on the site.

In addition to the above findings, the Board finds that the proposed second floor addition to the existing attached garage on subject property 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 second floor addition to the existing garage as there will be no increase to the existing nonconforming side yard setback and the nonconforming lot coverage by structure of 20.05% will not be increased through this special permit approval.

- B. The site is suitable for the proposed use as the property is zoned residential and the dwelling will continue to be maintained as a single-family dwelling through this 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 sewage disposal system is in place and a referral from the Board of Health was submitted to the file noting no additional bedrooms allowed on subject property with existing septic system.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition of a second floor to the existing attached garage 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 second floor addition to the existing garage 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 Potamis made a motion to Grant the Special Permit with conditions. Member Murphy 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 Thomas J. and Constance E. Novitsky (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to the existing attached garage on the pre-existing nonconforming single-family dwelling on subject property known as 24 Perch Pond Circle. This special permit shall be subject to the following conditions:

1. The addition of a second floor, all setbacks, lot coverage, height of second floor garage addition and use of the second floor of the garage and the garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - Hand drawn existing floor plans – first and second floor with a Board date ‘received’ stamp of July 17, 2018 (2 pages 8.5 x 11);
 - “Novitsky Residence 24 Perch Pond Falmouth, MA” architectural plans as drawn by David McLean Architectural Design Studio consisting of Drawings 1 of 7 through 6 of 7 showing Floor Plans, Elevations, Cross Sections and Framing – all drawings are dated 4/18/2018 and have a Board date ‘received’ stamp of July 17, 2018; and
 - “Plot Plan” for 24 Perch Pond Circle in Falmouth, Massachusetts as drawn by Cape & Islands Engineering dated June 11, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of July 17, 2018.

2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no habitable space created within the existing garage structure or the proposed second floor addition approved herein.
4. There shall be no heat installed within the second floor garage addition.
5. Drywells shall be installed on-site at the northwesterly and southwesterly corners of the garage – approximate location shall be at the discretion of the project engineer.
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. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. 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: **060-18**

Applicant: **THOMAS J. NOVITSKY and CONSTANCE E. NOVITSKY of Teaticket, MA**

Subject Property: **24 Perch Pond Circle, Teaticket, Massachusetts
Map 34 Section 03 Parcel 009M Lot 006**

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.

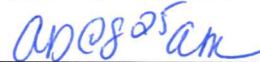


Terrence Hurrie, Chairman, Board of Appeals

RECEIVED

SEP 13 2018

FALMOUTH TOWN CLERK



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.