

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 064-18
APPLICANT/OWNER: ROBERT R. CASE and MARGARET E. CASE of Teaticket, MA
SUBJECT PROPERTY: 46 Iroquois Street, Teaticket, Massachusetts
Assessor's Map: Map 39A Section 07 Parcel 000 Lot 062
DEED/CERTIFICATE: Certificate 144316 – Lots 61, 62 and 63, Plan 4286A (Plate 11)
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 23, 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 convert existing one-car garage to a two car garage attached to the pre-existing nonconforming single-family dwelling on subject property known as 46 Iroquois Street, 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 October 11, 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 represented at the hearing by Dik Betzig 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)

07/23/2018 Dik Betzig, representative of applicant, submitted to the file a letter from him to Building Commissioner Palmer dated May 20, 2018 asking for designation of a front yard – Commissioner Palmer signed on 5/24/2018 with Iroquois designated as front yard

Letters/Referrals/E-mails from Town Departments

- 07/23/2018 Referral submitted to the file from Planning Department staff with no comment
- 07/24/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/26/2018 Referral submitted to the file from the Water Department with no comment
- 07/31/2018 Referral submitted to the file from Director of Assessing stating plan includes Lots 61, 62 and 63
- 08/03/2018 Referral submitted to the file from Board of Health Agent with no comment
- 08/10/2018 Referral submitted to the file from Conservation Commission with no comment
- 08/17/2018 Referral submitted to the file from Town Engineering Department with comments – see file – additional comments outside of standard comments were on Oak tree and driveway concerns

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 – Existing House & Demo” prepared for Robert & Margaret Case 46 Iroquois Street Falmouth, Massachusetts as drawn by BSS Design, Inc. dated June 19, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of October 4, 2018;

“Plot Plan – Proposed Addition” prepared for Robert & Margaret Case 46 Iroquois Street Falmouth, Massachusetts as drawn by BSS Design, Inc. dated June 19, 2018 with final revised date of October 2, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of October 4, 2018; and

“Garage Design Case Residence 46 Iroquois Street Falmouth, MA” as drawn by Designs by SPB – plans consist of Drawing A1 showing Proposed Elevations dated 7/9/2018 and Drawing A2 showing Floor Plan dated 7/9/2018 – both Drawings have a Board date ‘received’ stamp of July 23, 2018.

Hearing:

Dik Betzig explained that the existing single-car garage will be replaced with a two-car garage. There will be no additional habitable space created, no new curb cuts and lot coverage by structures will be increased from 23.5% to 23.89%. The second level will be accessed via a scuttle – there will not be a stairway and there will be no heat or insulation in second level. The extra bay will be used for storage of an antique car and personal storage. He noted that the deck at the rear of the house will be removed to

help keep lot coverage issue below 25% and then explained that a patio made from wood would be located just away from the house and is considered a patio.

The Board discussed plans with Mr. Betzig and stated concern of a wooden patio 7" above grade, although not attached to the dwelling, it still appears to be a deck and the Board members want confirmation that it is not a structure and therefore not calculated within lot coverage percentage for structures. The Board also discussed if the applicant needs to apply under Section 240-69 E. of the Code of Falmouth to allow the nonconforming lot coverage by structures to be increased (23.5% to 23.89%). Zoning Administrator noted that the application is filed under Section 240-3 C. which includes the nonconforming lot coverage by structures and may therefore be allowed to be increased through this special permit.

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

Member Bielan made a motion to continue the hearing to October 4, 2018 to allow confirmation from the Building Commissioner on Board's concern of 'wooden patio'. Member Dugan seconded the motion. Motion carried 5 – 0.

Continuation of hearing to October 4, 2018: No quorum – hearing rescheduled for October 11, 2018.

Continuation of hearing on October 11, 2018: Member Bielan absent – quorum of four (4).

Mr. Betzig was present and briefly reviewed the project and noted that the applicant has changed the 'wooden patio' to a patio using concrete pavers so that lot coverage by structures will increase slightly from 23.51% to 23.89% and thereby removing the Board's concern of the 'wooden patio' adding to lot coverage by structures.

Member Potamis made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 4 – 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 46 Iroquois Street in Teaticket contains 7,200 square feet of Residential C zoned land that located within the Little Pond Coastal Pond Overlay District and a portion of subject property is also located within the Search and Rescue Overlay. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to replace existing one-car garage to a two-car garage attached to the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling on subject property has a non-conforming setback of 18.6' to the front property line off Iroquois Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the lot coverage by structures is nonconforming at 23.51% whereas a 20% maximum is required under Section 240-69 A. of the Code of Falmouth. Because the subject property has frontage off two (2) roadways, the applicant

submitted a letter (noted above) that the Building Commissioner signed on 5/24/2018 with a determination that the frontage on Maravista Avenue will be considered a side yard pursuant to Section 240-13 "Definitions" – 'Yard, front' (B). Note: The lot coverage became nonconforming due to a 2002 Town Meeting vote that decreased the then lot coverage by structures maximum of 35% to 20% (dwelling is circa 1969). The applicant is proposing to replace the existing attached one-car garage with a two-car garage and to maintain the lot coverage below 25% (as allowed by special permit under Section 240-69 E. of the Code of Falmouth) the existing attached deck will be removed as well as the shed located in the northeasterly corner of subject property. Initially the applicant proposed a wooden patio, detached from the dwelling, approximately 7" off grade, but the Board had a concern that it was still a 'structure' counted within the lot coverage by structures, so the Board has the applicant to get a determination from the Building Commissioner to verify that the 'wooden patio' does not constitute a structure as proposed – and continued the hearing. At the continuation the applicant's representative informed the Board that the applicant will create a 'paver' patio and that wood would not be used within the design.

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 change from a one-car attached garage to a two-car attached garage with storage above will not be substantially more detrimental than what currently exists as the nonconforming setback off Iroquois Street will not be increased, the setback from Maravista Avenue existing at 23.9', as determined by the Building Commissioner, is a side yard and the proposed garage structure will have a 13' setback to the property line off Maravista Avenue. The Board further finds that the lot coverage, nonconforming at 23.51% will be slightly increased to 23.89% and as designed will be in keeping with the character of the existing two-story dwelling. Furthermore, the Board finds according to testimony by the applicant's representative that there is no intent to create any habitable space within the proposed two-car garage (including the second level), that said garage will be used to store vehicles/personal items and that the second level of the proposed garage will remain unfinished with no heat – access to the second level is through a scuttle (no stairway).

The Board finds that the applicant is amenable to install drywells in order to maintain stormwater runoff on subject property. The Board further finds that the applicant changed the design of the 'wooden patio' to that of a 'paver patio' off the rear of the dwelling.

In addition to the above findings, the Board finds that the proposed two-car garage 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 conversion of a one-car garage into a two-car garage attached to the dwelling as the existing nonconforming setback to Iroquois Street will not be impacted and the lot coverage by structures will be only slightly increased from 23.51% to 23.89%.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be maintained as a single-family dwelling with no additional habitable space allowed 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 subject property is on Town sewer as noted in the Board of Health referral.

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

G. The proposed garage 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 conversion from a one-car garage to a two-car garage attached to 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 Murphy made a motion to Grant the Special Permit with conditions. Member Potamis 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 **4 – 0 to Grant a Special Permit** to Robert R. and Margaret E. Case (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to replace existing one-car garage to a two-car garage with storage space on second level attached to the pre-existing nonconforming single-family dwelling on subject property known as 46 Iroquois Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The proposed two-car garage with storage on second level, all setbacks, lot coverage by structures, height of garage and use of garage space shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Plot Plan – Existing House & Demo” prepared for Robert & Margaret Case 46 Iroquois Street Falmouth, Massachusetts as drawn by BSS Design, Inc. dated June 19, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of October 4, 2018;

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2. There shall be no habitable space created anywhere within the proposed two-car garage and second level, approved herein.
3. The second level of the proposed garage shall remain unfinished and unheated (as stated in hearing by applicant).
4. Drywells shall be located on subject property at approximately the southwesterly and northwesterly corner of the proposed garage structure – exact location shall be at the discretion of the project engineer.
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: **064-18**

Applicant/Owner: **ROBERT R. CASE and MARGARET E. CASE of Teaticket, MA**

Subject Property: **46 Iroquois Street, Teaticket, Massachusetts
Map 39A Section 07 Parcel 000 Lot 062**

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 – 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

OCT 19 2018

FALMOUTH TOWN CLERK

AP @ 9:20 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.