

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 106-18

APPLICANT/OWNER: Richard F. and Jean M. Abrams, 9 Jasper Street Ext., Westborough, MA

SUBJECT PROPERTY: 217 Edgewater Drive West, East Falmouth, Massachusetts
Assessor's Map: Map 32, Section 16, Parcel 000G, Lot 006

DEED/CERTIFICATE: Book: 29844, Page: 274

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed on October 30, 2018, with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3(C) of the Code of Falmouth, to construct a master bedroom addition on the second floor of the dwelling, on subject property, known as 217 Edgewater Drive West, Massachusetts.
2. Notice was duly given, as required by M.G.L. Ch. 40 A, § 11, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list, and at which hearing, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was originally scheduled to open on December 20, 2018. However, the Zoning Board of Appeals lacked a quorum to hold the public hearing. The hearing was rescheduled to be heard on January 10, 2019, and was re-advertised in a local newspaper, with notices mailed to abutters. Richard Abrams signed an extension for the opening of the hearing, which extension

was dated December 19, 2018, and filed with the Town Clerk, on December 19, 2018. The advertised public hearing was opened on January 10, 2019.

4. The public hearing was closed on January 10, 2019, wherein the Zoning Board of Appeals, consisting of Chairman Terrence J. Hurrie, Vice Chairman Kenneth H. Foreman, Member Edward Van Keuren, Member Paul Murphy, and Associate Member Robert Dugan (appointed as voting member by Mr. Hurrie), made a decision to grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

5. Richard Abrams reviewed and discussed the request for special permit with the Board.

6. The documents and information received by the Zoning Board of Appeals are on file in the office at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- None

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

- Transmittal Letter from BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, MA, dated November 13, 2018

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 12/4/18
- Conservation Commission, no reply
- Board of Health, comments, dated 11/27/18
- Water, comments, dated 10/31/2018
- Assessors, no comments, dated 10/31/18
- Fire Department, no comments, dated 11/1/18
- Planning, no comments, dated 10/31/18

Plans submitted by Applicant/Applicant's Representative

- "Plot Plan-Proposed Addition", prepared for Richard Abrams, 217 Edgewater Drive West, East Falmouth, Massachusetts, prepared by BSS Design, Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated October 23, 2018
- "Custom Addition Design, Abrams Residence, 217 Edgewater Drive, Falmouth, MA", including Sheets A1, A2, S1, and D2, all prepared by Designs by SPB, Pocasset, MA, dated 10-11-2018
- "First Floor Plan", undated, stamped Received by Falmouth ZBA on Nov. 05, 2018

Hearing:

Appearing before the Board was Richard Abrams, 9 Jasper Street Ext, Westborough, Massachusetts, property owner. Mr. Abrams presented the case information, and discussed the plans for the addition above the existing family room, to create a master bedroom. One existing second floor bedroom will be renovated into an office and a bathroom, maintaining the property as a three-bedroom dwelling. Mr. Abrams stated that the master bedroom will have a slight overhang; therefore the lot coverage will change slightly, from 15.1% to 15.7%. He noted that the pre-existing nonconformity of the dwelling being only 22.1 feet from the street, will not change.

Mr. Abrams reported that he had a negative determination from the Conservation Commission for the proposal. He noted that he had a shed sited over the northerly side lot line, which he moved onto his lot, and further away from the water.

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

Associate Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5-0.

Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted at the hearing, and made the following findings:

The subject property, located at 217 Edgewater Drive West, East Falmouth, Massachusetts, comprises 8,000 square feet of area (7,500 upland), in Residence C zoned land, within the Eel Pond Coastal Overlay District. The lot has 80 feet of frontage and lot width. The dwelling is sited 21.1 feet from the street. The premises is nonconforming due to insufficient lot area, street frontage, lot width, and distance from the street. The applicant applied under Section(s) 240-3 (C) of the Code of Falmouth to allow construction of a second floor master bedroom above the existing family room of the dwelling. An existing bedroom shall be converted to office space, plus a new bathroom.

The Board found that the proposed changes to the pre-existing nonconforming dwelling were not substantially more detrimental to the neighborhood than the existing dwelling.

In addition to the above findings, the Board finds that the proposed master bedroom will be in harmony with the general purpose and intent of the By-Law, and does include consideration as 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 master bedroom, with the lot coverage changing slightly from 15.1 to 15.7%.

B. The site is suitable for the proposed use, as the property is zoned residential, and has been used as such since its inception.

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 the site.

D. There does not appear to be any impact on the visual character of the neighborhood, with the ridge height remaining the same, and no impact on any view or vista from the roadway or abutting properties, as the master bedroom will angle away from the street, and be screened by existing pine trees.

E. The septic system is approved for three bedrooms, and there will be no increase in bedroom count, due to an existing bedroom being converted to an office.

G. The addition 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 in compliance with 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 Zoning Board of Appeals weighed the effects of the proposed master bedroom addition at 217 Edgewater Drive West, East Falmouth, Massachusetts, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Member Murphy made a motion to grant the Special Permit with conditions. Member Dugan seconded the motion; with a unanimous 5-0 vote.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0 to grant a special permit under Section(s) 240-3 (C) of the Code of Falmouth to allow the second floor master bedroom addition. This special permit shall be subject to the following conditions:

1. The second floor master bedroom addition shall be as represented to the Board, being no closer than 12.1 feet from the northerly property side lot line, and substantially as shown on the plans submitted and reviewed by the Board as follows:
 - "Plot Plan-Proposed Addition", prepared for Richard Abrams, 217 Edgewater Drive West, East Falmouth, Massachusetts, prepared by BSS Design, Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated October 23, 2018
 - "Custom Addition Design, Abrams Residence, 217 Edgewater Drive, Falmouth, MA", including Sheets A1, A2, S1, and D2, all prepared by Designs by SPB, Pocasset, MA, dated 10-11-2018
2. One existing bedroom shall be converted to office space, plus a bathroom. This dwelling is limited to three bedrooms.
3. The shed shall remain in a conforming location on the premises.

4. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

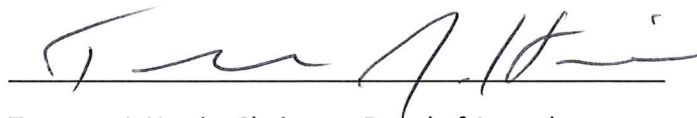
5. The Applicant shall comply with the Engineering referral recommendations of 12/4/18.

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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may 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 Zoning Board of Appeals.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 0 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, Chairman, Board of Appeals

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