



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 117-18

APPLICANT/OWNER: Michael Gordon Jones, Trustee of the Michael Gordon Jones Revocable Trust 2013
65 Shady Lane, Hatchville, MA

SUBJECT PROPERTY: 65 Shady Lane, Hatchville, Massachusetts
Assessor's Map: Map 16, Section 03, Parcel 020, Lot 018

DEED/CERTIFICATE: Book: 30367 Page: 298

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed on December 20, 2018, with the Zoning Board of Appeals, for a Special Permit, pursuant to Section(s) 240-3 and 240-68 (D) of the Code of Falmouth, to construct a bedroom addition, at 65 Shady Lane, Hatchville, Massachusetts (the "Premises").
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.
3. The hearing was opened on January 31, 2019. Board members Terrence J. Hurrie, (Chairman), Edward Van Keuren (Acting Clerk), Robert Dugan, and Gerald Potamis were present. (Board members Paul Murphy (resigned), and Kenneth H. Foreman were absent.) Mr. Potamis and Mr. Dugan were appointed voting members for the hearing. The Chairman announced that, due to the Board's composition, a unanimous vote was required for approval.

6. Thomas J. Bunker, BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, MA appeared before the Board, consented to continue with the hearing, and presented the case. Mr. Bunker represented Michael Gordon Jones, Trustee of the Michael Gordon Jones Revocable Trust 2013, 65 Shady Lane, Hatchville, Massachusetts (the "Applicant").

7. The public hearing was closed on January 31, 2019, wherein the Board made a decision to grant the Special Permit, with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

8. 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

- E-mail letter from Samuel Paikowsky, owner of parcel immediately to north

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

- Authorization for representation, signed by Michael G. Jones, dated November 16, 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 1/8/19
- Conservation Commission comments, dated 1/22/19
- Board of Health comment, dated 1/3/19
- Water comment, dated 12/26/2018
- Assessors, no comment, dated 12/26/18
- Fire Department, no comment, dated 12/24/18
- Planning, no comments, dated 12/28/18

Plans submitted by Applicant/Applicant's Representative

- "Plot Plan – Proposed Addition, prepared for Michael Jones, 65 Shady Lane, Hatchville Falmouth, Massachusetts", "Existing & Demo, 1 of 3", prepared by BSS Design Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated Nov 20, 2018
- "Plot Plan – Proposed Addition, and Subsurface Seweage (sic) Disposal System Upgrade prepared for Michael Jones, 65 Shady Lane, Hatchville Falmouth, Massachusetts", "Site Plan, 2 of 3", prepared by BSS Design Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated Nov 20, 2018
- "Plot Plan – Proposed Addition, and Subsurface Seweage (sic) Disposal System Upgrade prepared for Michael Jones, 65 Shady Lane, Hatchville Falmouth, Massachusetts", "Site Plan, 3 of 3", prepared by BSS Design Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated Nov 20, 2018
- "Jones Residence, 65 Shady Lane, Falmouth, Massachusetts", prepared by Rescom Architectural, Inc., 118 Waterhouse Road, Bourne, MA, including sheets EX 1, EX 2, EX 3, EX 4, all dated 09-14-18, and sheets SP, A1, A2, A3, and A4, all dated 10-16-18

- January 31, 2019 Hearing:

Appearing before the Board was Mr. Bunker. He stated that the Applicant requests a special permit to add a one-bedroom, one bathroom single-story addition to the northerly side of the existing dwelling.

The existing structure is sited 58.5 feet from the east, 47.7 feet from the north, 39 feet from the edge of the pond at the west, and 25.4 feet from the southerly lot line, where a portion of the lot fronts on Shady Lane. Mr. Bunker reported that the Premises is nonconforming as to the setback from the pond, where 50 feet is required. The addition complies with district setback requirements.

Mr. Bunker stated that the existing lot coverage by structures is 8.7%. He stated that the lot coverage will increase to 11.5%, following the construction of the proposed addition. Mr. Bunker stated that the dwelling had an unfinished basement, one bedroom on the first floor, and two bedrooms on the second floor. He stated that the plan is to add a single story addition, which would be 17 feet tall. He reported that the existing dwelling is 21 feet in height. Mr. Bunker stated that there was little visibility on to the Premises from the street.

Mr. Bunker stated that there is a northwesterly portion of the lot that falls under Zone II. He stated that they are upgrading to a new septic system, but that the new septic system will be toward the easterly end of the lot, and completely out of Zone II. Mr. Bunker also reported that drywells are planned for roof runoff.

The Board inquired about the letter received from the abutter to the north, regarding screening. Mr. Bunker stated that the abutting parcel to the north is currently unimproved, and that there is no dwelling to specifically screen from. He also stated that the addition will only be a single-story, and therefore lower than the height of the existing dwelling. Mr. Bunker stated that there are currently existing deciduous trees, along the northerly lot line, which will remain. He also noted that the addition will be 38.9 feet from the northerly side lot line, which exceeds the 10-foot minimum side yard setback, provided in the By-Law.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. No one further appeared on the petition.

Mr. Dugan made a motion to close the hearing. Mr. Van Keuren seconded the motion. The motion carried 4-0.

Chairman Hurrie closed the hearing.

FINDINGS

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

The subject site is located at 65 Shady Lane, Hatchville, Massachusetts (the "Premises"), and comprises 19,800 square feet, in the Agricultural A zoning district, which requires a minimum 45,000 square feet. The Premises has 144.60 feet of frontage toward Shady Lane, though only a portion is actually on the street, due to the fact that Shady Lane terminates at the Premises. The Premises is sited 39 feet from the edge of Crooked Pond, and the By-Law requires a 50-foot setback from the edge of the pond. Accordingly, the Premises is nonconforming, due to deficient lot area, street frontage, and setback from

the edge of the pond. The Applicant applied under Section(s) 240-3 and 240-68 (D) of the Code of Falmouth, to add a single-story addition to the northeast side of the dwelling.

The addition shall be sited 38.9 feet from the north, and 50.2 feet from the east side yard lot lines. The addition shall be 17 feet in height. The architectural plans submitted show a bedroom, closet space, and a ¾ bathroom.

The existing lot coverage by structures is 8.71%; the proposed lot coverage is 11.5%. The lot coverage by structures/ paving/ parking is being increased from 14.2% to 17%.

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

In addition to the above findings, the Board finds that the proposed reconstruction 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 addition, which will comply with district setback requirements. The lot coverage by structures is less than the maximum 20% allowed, and the lot coverage by structures/ paving/parking will be less than the 40% maximum.
- B. The site is suitable for the proposed use, as the property is zoned Agricultural A, with neighboring single family residences.
- C. There will be no impact on traffic flow and safety.
- D. There does not appear to be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the addition is 17 feet in height, which is lower than the existing dwelling, and below the By-Law maximum height of 2.5 stories, not to exceed 35 feet.
- E. The Board of Health has approved the additional bedroom, and will oversee installation of the new septic system.
- G. The reconstruction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no requirement for Site Plan Review, and the Planning Board issued no comment on December 28, 2018.
- I. The application is in compliance with all applicable sections of the Zoning By-Laws 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 reconstruction at the Premises, 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 By-Law, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Mr. Dugan made a motion to grant the Special Permit with conditions. Mr. Van Keuren seconded the motion; with a unanimous 4-0 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 4 to 0, to grant a special permit under Section(s) 240-3 C and 240-68 D. of the Code of Falmouth, to allow a single-story, 1-bedroom, ¾ bathroom addition. This special permit shall be subject to the following conditions:

1. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
 - "Plot Plan – Proposed Addition, prepared for Michael Jones, 65 Shady Lane, Hatchville Falmouth, Massachusetts", "Existing & Demo, 1 of 3", prepared by BSS Design Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, dated Nov 20, 2018
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2. The addition shall comprise 668 square feet, on the first floor.
3. The maximum height of the addition shall be 17 feet.
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 any Town Boards or departments having jurisdiction over the development.
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: 4 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, Zoning Board of Appeals

RECEIVED
FEB 14, 2019 AM 9:08
TOWN CLERK



Date Filed With Town Clerk