



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 116-18

APPLICANT/OWNER: RVK Real Estate, LLC
6 Ashley Road, Southborough, MA

SUBJECT PROPERTY: 372 Maravista Avenue, Teaticket, Massachusetts
Assessor's Map: Map 46A, Section 08, Parcel 000, Lot 087

DEED/CERTIFICATE: 201024 1227122-1:201024

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 240-3. C. of the Code of Falmouth, to relocate an existing stairway and bulkhead, at 372 Maravista Avenue, Teaticket, 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.

4. Kevin P. Klauer, II, Esq., Ament Law Firm LLC, 39 Town Hall Square, Falmouth, MA appeared before the Board, consented to continue with the hearing, and presented the case. Mr. Klauer, II represented RVK Real Estate, LLC, 6 Ashley Road, Southborough, Massachusetts (the "Applicant").

5. 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.

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)

- Authorization for representation, signed by Elizabeth P. Dill, Authorized Signer, RVK Real Estate, LLC, dated December 20, 2018
- Letter from Kevin P. Klauer, II, Esq., dated January 29, 2019
- Letter from Kevin P. Klauer, II, Esq., dated January 28, 2019
- Letter from Kevin P. Klauer, II, Esq., dated December 19, 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 1/11/19
- Conservation Commission, no reply
- Board of Health, comment, dated 1/3/19
- Water, comment, dated 12/26/2018
- Assessors, no comment, dated 12/28/18
- Fire Department, no comment, dated 12/21/18
- Planning, no comments, dated 12/28/18
- Zoning Board of Appeals Decision, dated August 11, 2017

Plans submitted by Applicant/Applicant's Representative

- "Dill-Enge Residence, 372 Maravista Avenue, Falmouth, MA", including "Existing Basement, sheet EX-1", "First Floor Plan, sheet EX-2", "Second Floor Plan, sheet EX-3", "North & South Elevation, sheet EX-4", and "East and West Elevations, sheet EX-5", all prepared by Beatrice A. Bunker Architecture, 164 Katharine Lee Bates Road, Falmouth, MA, and dated November 19, 2018
- "Dill-Enge Residence, 372 Maravista Avenue, Falmouth, MA", including "First Floor Plan Changes, sheet A1", "Second Floor Plan Changes, Ext. Door & Window Schedule, sheet A2", "East & West Elevations, sheet A4", and "South Elevation, Section, sheet A5", all prepared by Beatrice A. Bunker Architecture, 164 Katharine Lee Bates Road, Falmouth, MA, and dated November 19, 2018

- “Plot Plan – Proposed Renovations, for #372 Maravista Avenue”, prepared by Falmouth Engineering, 17 Academy Lane, Falmouth, MA, rev. dated 1/25/19

January 31, 2019 Hearing:

Appearing before the Board was Mr. Klauer, II. He stated that the Applicant received a Special Permit for additions to the Premises from the Zoning Board of Appeals, which was filed with the Town Clerk, on August 11, 2018. Mr. Klauer, II stated that they are seeking a modification to that special permit, to allow a small addition, and minor alterations.

Mr. Klauer, II noted that the Premises is sited in the Residential C zoning district, and comprises 12,000 square feet of lot area. The four-bedroom dwelling currently covers 17.8 percent of the lot by structures. He reported that there is an existing encroachment into the south and west. Mr. Klauer, II stated that the Applicants seek to install a roof covering over the existing landing at the southwest, and add stairs at the south side. For the easterly side of the dwelling, the proposal is to remove, and relocate, an existing bulkhead and air conditioning condensers. The condensers will be relocated at the easterly side, but further toward the north. The bulkhead will be relocated on the easterly side, toward the south. The Applicant seeks to construct an addition to the easterly side of the dwelling, to provide for kitchen and bathroom space. New stairs will also be installed at the easterly side.

Mr. Klauer, II stated that there will be no new nonconformities, and that the lot coverage by structures will be 18.6%; below the 20% maximum allowed. He reported that the Town’s engineering concern about drainage for the driveway has been resolved.

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 372 Maravista Avenue, Teaticket, Massachusetts (the “Premises”), and comprises 12,000 square feet, in the Residence C zoning district. The Premises is also located in the Little Pond Coastal Pond Overlay District, and the Search and Rescue Overlay District. The Premises has 160 feet of street frontage on Maravista Avenue, 90 feet on Boston Street, and 60 feet on Brockton Street. Residential C district requires a minimum 40,000 square foot lot, and 100 feet of street frontage. The Building Commissioner has designated Maravista Avenue as the street for front yard requirements. The dwelling is sited 9.7 feet from Maravista Avenue. The new bulkhead will be sited 4.1 feet from the southeast corner of the lot. Accordingly, the Premises is nonconforming, due to deficient lot area, as well as the existing encroachment into the Maravista Avenue street setback, and the encroachment into the southeast corner side lot line. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth, for an addition, stairs and bulkhead to the east, new stairs to the south, and a roof over the west entry landing.

The new stairs to the east shall be 30.5 feet from the side lot line. The new bulkhead shall be sited in the place of brick steps, which are being removed. The bulkhead shall be sited 4.1 feet from the southeast corner of the Premises. The new stairs to the south shall be sited 74.4 feet from the southerly side lot line. The 5-foot by 14.5 foot infill addition at the easterly side is further from the easterly lot line than the new stairs. The roof for the entry at the west will be approximately 20 feet from the Maravista Avenue street lot line.

The existing lot coverage by structures is 17.8%; the proposed lot coverage by structures is 18.6%. The lot coverage by structures/ paving/ parking is being increased from 23.4% to a maximum of 25.8%, which is below the maximum 40%.

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

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 changes, as described above, and will remain below the maximum lot coverage for the district.
- B. The site is suitable for the proposed use, as the property is zoned Residence C, 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 minor changes to the structure.
- E. The Board of Health reported that the Premises is on Town sewer.
- F. Utilities and public services are adequate.
- G. The 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 no comment was issued on the application.
- 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 Bylaw, 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. of the Code of Falmouth, to allow an addition, stairs and bulkhead on the east, stairs to the south, and a new roof over the westerly landing. 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:
 - "Dill-Enge Residence, 372 Maravista Avenue, Falmouth, MA", including "Existing Basement, sheet EX-1", "First Floor Plan, sheet EX-2", "Second Floor Plan, sheet EX-3", "North & South Elevation, sheet EX-4", and "East and West Elevations, sheet EX-5", all prepared by Beatrice A. Bunker Architecture, 164 Katharine Lee Bates Road, Falmouth, MA, and dated November 19, 2018
 - "Dill-Enge Residence, 372 Maravista Avenue, Falmouth, MA", including "First Floor Plan Changes, sheet A1", "Second Floor Plan Changes, Ext. Door & Window Schedule, sheet A2", "East & West Elevations, sheet A4", and "South Elevation, Section, sheet A5", all prepared by Beatrice A. Bunker Architecture, 164 Katharine Lee Bates Road, Falmouth, MA, and dated November 19, 2018
 - "Plot Plan – Proposed Renovations, for #372 Maravista Avenue", prepared by Falmouth Engineering, 17 Academy Lane, Falmouth, MA, rev. dated 1/25/19
2. The addition to the east shall be 5-feet by 14.5-feet, plus new stairs, and a bulkhead. There shall be new stairs at the south, to be 74.4 feet from the southerly lot line, and a new roof over the westerly landing.
3. 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.
4. The Applicant shall comply with any Town Boards or departments having jurisdiction over the development, including the Engineering drainage requirement, attached to the referral, dated 1/11/19.
5. 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.)
6. 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, for 372 Maravista Avenue, Teaticket, Massachusetts, 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 9:06
TOWN CLERK *esl*

Date Filed With Town Clerk