



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 010 -19

APPLICANT/OWNER: Patricia Quinn Pagani and David A. Pagani, Trustees of the Patricia Quinn Pagani Revocable Trust, 2494 Edgemere Drive, Rochester, NY

SUBJECT PROPERTY: 36 Hamilton Street, Teaticket, Massachusetts

Assessor's Map: Map 46A , Section 17, Parcel 000, Lot 000B

DEED/CERTIFICATE: Certificate: 212636

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On March 4, 2019, the Applicant filed an application with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3. C. and 240-69 E. of the Code of Falmouth, to construct an attached garage with workshop space, and a master bedroom above, on subject property at 36 Hamilton Street, Teaticket, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The advertised public hearing was opened on April 18, 2019, at which hearing, relevant testimony was heard.
4. The public hearing was closed on April 18, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Chairman, Kenneth H. Foreman, Vice Chairman, Robert B. Dugan, Member, Edward Van Keuren, Acting Clerk and Gerald Potamis, Associate Member, (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. The Applicant was represented at the hearing by Kevin Klauer II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA, who reviewed and discussed the request for special permit with the Board.

6. The Board received documents and information prior to and during the public hearing, which 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

- Email from Margaret Trainor, dated April 2, 2019
- Email letter from Susan D. Salley, 30 Lawrence Street, Falmouth, MA, dated April 2, 2019
- Photograph from Susan Salley, dated April 6, 2019

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

- "Lot Comparison, 36 Hamilton Street, East Falmouth, MA", date stamped received Mar 4, 2019
- Letter from Kevin P. Klauer II, Ament Klauer, 39 Town Hall Square, Falmouth, MA, dated March 5, 2019
- Letter authorizing representation, by David A. Pagani, and Patricia Q. Pagani, dated December 7, 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 4/5/19
- Conservation Commission, no reply
- Board of Health, comments, dated 4/2/19
- Water, comments, dated 3/6/2019
- Assessors, no comments, dated 3/7/19
- Fire Department, no comments, dated 3/7/19
- Planning, no comments, dated 3/11/19
- Zoning Board of Appeals Decision, dated April 22, 1974

Plans submitted by Applicant/Applicant's Representative

- "36 Hamilton Street in East Falmouth, Massachusetts", plot plan prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, rev dated 3/5/19
- "Pagani House Remodel, 36 Hamilton Street, East Falmouth, MA", prepared by Denise D'Ambrosi Bonoli, P. O. Box 991, East Falmouth, MA, date stamped received Mar 5, 2019, including pages "Existing Lower Level Plan", "Existing Upper Level Plan", "Existing Front Elevation", "Existing Back Elevation", "Existing Left Side Elevation", "Existing Right Side Elevation", "Proposed Lower Level Plan", "Proposed Upper Level Plan", "Proposed Front Elevation", "Proposed Back Elevation", "Proposed Right Side and Left Side Elevation".

Hearing:

April 18, 2019

Appearing before the Board was Kevin Klauer II, , representing Patricia Quinn Pagani and David A. Pagani, Trustees of the Patricia Quinn Pagani Revocable Trust, 2494 Edgemere Drive, Rochester, NY (the "Applicants"), regarding 36 Hamilton Street, Teaticket, Massachusetts (the "Premises"). Mr. Klauer II stated that they are applying under By-Law §240-3C and 240-69 E, to add an attached garage, with living space above. Mr. Klauer noted that the Premises is sited in the Single Residence C district, and that they seek to improve the existing 6 bedroom home. The addition would be 22 feet in height, to include a 2-car garage with workshop space, plus a master bedroom above, which will comply with all district setback requirements, and maintain bedroom count. Mr. Klauer stated that the lot coverage can be granted as a special permit by the Zoning Board of Appeals. He reported that there will be no impact on views and vistas, noting that neighbors do not have a view easement; therefore the private views are not protected. Mr. Klauer stated that the addition will not be considerably more visible, nor cause shadows. Mr. Klauer also submitted a "Lot Comparison", containing neighboring lots and footprint percentages to demonstrate that the proposal fits within the neighborhood. He stated that the Premises is connected to the sewer, and that they are willing to remove the existing shed (at the northwest property corner).

The Board discussed the bedroom count, and frontage on two streets. Mr. Klauer stated that they have filed with the Conservation Commission, and that he will submit that information to the file

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

Mr. Potamis made a motion to close the hearing. Mr. Van Keuren seconded the motion. The motion carried 5-0. 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:

Registry records reflect a taking in 1961, to expand Hamilton Street. The petition to the Zoning Board of Appeals in 1974, noted that the property was an odd shaped vacant lot, which reportedly made the placement of a home "difficult or impossible". On April 23, 1974, the Board filed a variance Decision, granting the "back yard will be a 10-foot setback in the back, and the front yard setback will be 24 feet instead of 25 feet". The plot plan, presented with the application, shows that the existing dwelling is 12 feet from Hamilton Street, 20.5 feet from Great Bay Street, 21.8 feet from the north (rear), with a rinse station approximately 17 feet from the north, and 25.1 feet from the west side lot line. The Premises is also improved by a shed, sited 7 feet from the north, and 4.8 feet from the west. Sheds in excess of 100 square feet are subject to the district setback for structures of 10 feet, from side and rear lot lines.

The Premises is sited in the Single Residence District C, and comprises 8,730 square feet of area, in a district requiring a minimum of 20,000 square feet. The Premises is also sited in the Great Pond Coastal Pond Overlay District. Existing lot coverage by structures is 17.5%; the proposed lot coverage is 24.7%.

Lot coverage up to 25% is permissible by special permit. The lot coverage by structures/parking/paving is 25.3%; the proposed is 33.8%. The lot comparison data submitted to the record indicates 7 neighboring dwellings that are also 2-story structures, and 13 structures which exceed the 20% lot coverage by structures.

The Board found that there would be no new nonconformity created, nor an exacerbation of existing conditions.

In addition to the above findings, the Board finds that the proposed construction 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 use. The lot coverage by structures will be increased from 17.5 % to 24.7 %, and the lot coverage by structures/ paving/parking will be increased from 25.3 % to 33.8 %. The lot coverage by structures will be less than the 25% maximum, allowed by special permit, and lot coverage by structures/ paving/parking will be less than the maximum 40% allowed.

B. The site is suitable for the proposed use, as the property is zoned Single 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 a general impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the addition will be 21 feet in height; therefore not taller than the existing structure, at 22 feet, nor approaching the 35-foot maximum height provided for in the By-Law. The addition will also comply with district setback requirements. Representing counsel has stated that the neighbors do not have specific view easements.

E. There will be no impact on sewage disposal, source of water, and drainage; the Premises is on Town sewer, and the Applicant is required to pursue the final tie-in permit with the Board of Health.

G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no requirement for review by the Planning Board, and they issued no comment on March 11, 2019.

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 addition 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 dwelling, to the neighborhood.

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, following a motion made by Mr. Potamis, and seconded by Mr. Van Keuren, to grant a special permit, with conditions, under Section(s) 240-3 C., and 240-69 E. of the Code of Falmouth, to allow an addition to the west side of the dwelling. 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:
 - "36 Hamilton Street in East Falmouth, Massachusetts", plot plan prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, rev dated 3/5/19
 - "Pagani House Remodel, 36 Hamilton Street, East Falmouth, MA", prepared by Denise D'Ambrosi Bonoli, P. O. Box 991, East Falmouth, MA, date stamped received Mar 5, 2019, including pages "Existing Lower Level Plan", "Existing Upper Level Plan", "Existing Front Elevation", "Existing Back Elevation", "Existing Left Side Elevation", "Existing Right Side Elevation", "Proposed Lower Level Plan", "Proposed Upper Level Plan", "Proposed Front Elevation", "Proposed Back Elevation", "Proposed Right Side and Left Side Elevation".
2. The westerly addition will be sited 25 feet from the northerly (rear) lot line, 11.1 feet from the west (side) lot line, and 25 feet from Hamilton Street (south).
3. The existing 101 square foot shed, sited at the northwest corner of the Premises, shall be removed.
4. The maximum height of the addition shall be 21 feet.
5. The Applicant shall work with Town Engineering regarding grading, drainage and stormwater management for the addition and driveway.
6. 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.
7. The Applicant is limited to a maximum of six bedrooms, which are existing, as represented by Applicant's counsel. The Applicant shall comply with Board of Health for final tie-in permitting requirements, any Conservation Commission requirements, and any other Town Boards or departments having jurisdiction over the development.
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, 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.)
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 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.



Robert B. Duga, Member, Zoning Board of Appeals

RECEIVED
APR 25, 2019 PM 12:08
TOWN CLERK



Date Filed With Town Clerk