



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO.: 015 -19

APPLICANT/OWNER: M + P Aylward Family Irrevocable Trust, Paula + Michael Aylward, Trustees
3 Bower Road, Braintree, Massachusetts

SUBJECT PROPERTY: 68 Silver Beach Avenue, North Falmouth, Massachusetts
Assessor's Map: Map 04A, Section 44, Parcel 000, Lot 391

DEED/CERTIFICATE: Book: 28488 Page: 0176

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On March 25, 2019, the Applicant filed an application 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 6-foot by 9-foot bathroom addition on subject property at 68 Silver Beach Avenue, North Falmouth, 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 May 2, 2019, at which hearing, relevant testimony was heard.
4. The public hearing was closed on May 2, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Chairman, Kenneth H. Foreman, Vice Chairman, Edward Van Keuren, Member,

Robert B. Dugan, Acting Clerk, and Gerald Potamis, Member, made a decision to grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

5. Paula and Michael Aylward, 3 Bower Road, Braintree, MA, owners of 68 Silver Beach Avenue, North Falmouth, MA (the "Applicant"), were present at the hearing, and discussed the request for special permit with the Board.

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

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

- March 25, 2019 letter of representation, signed by Paula Aylward,
- "Lot Coverage/Bulk Calculations Worksheet, 68 Silver Beach Avenue, North, Falmouth, MA, submitted by ZBA Staff, dated 4-19-2019

Letters/E-mails from Abutters/Interested Parties:

- April 18, 2019 letter from Thomas P. and Ellen E. Leonard, 212 Mill Street, Mansfield, MA , owner of 71 Silver Beach Avenue, North Falmouth, MA (support)
- April 19, 2019 letter from Robert C. and Janice M. Bullock, Trustees, 66 Silver Beach Avenue, North Falmouth, MA (support)

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 4/11/19 (project must not direct stormwater runoff off property; dry wells, rain garden, or other stormwater measure recommended for roof area)
- Conservation Commission, no comment, dated 4/10/19
- Board of Health, comments, dated 4/2/19, (addition appears not to encroach closer to the existing leach pit)
- Water, no comments, dated 3/27/2019
- Assessors, no comments, dated 4/1/19
- Fire Department, no comments, dated 3/28/19
- Planning, no comments, dated 3/27/19

Plans submitted by Applicant/Applicant's Representative

- "Certified Plot Plan" for Paula Aylward, 68 Silver Beach Avenue, Falmouth, MA, prepared by Warwick & Associates Inc., 63 Country Road, Box 801, North Falmouth, MA, dated 3/14/19
- "Bathroom Design, Aylward Residence, 68 Silver Beach Ave., North Falmouth, MA", prepared by Designs by SPB, Pocasset, MA, including sheets A1 and S1, dated 1-6-19

Hearing:

May 2, 2019

Paula and Michael Aylward appeared before the Board, regarding 68 Silver Beach Avenue, North Falmouth, Massachusetts. Mrs. Aylward stated that they seek a 6-foot by 9-foot bathroom addition, to provide an additional bathroom for a family member with medical issues. She reported that the area currently houses a washer and dryer unit, and that the addition would square off the existing house. Mrs. Aylward noted that the 1977 addition to the dwelling exceeded the lot coverage permitted now, but that it was permissible at that time. She also noted that the lot is actually 55 feet by 85 feet; in the past they had understood that the lot was dimensioned 55 feet by 95 feet.

Mr. Aylward stated that they are willing to remove an existing deck, at the easterly side of the shed, to decrease the lot coverage, so that the bathroom would not cause an increase to the existing lot coverage. He stated that he would like to maintain the 10-foot by 10-foot shed, to provide for storage space. The small concrete pad at the southerly side of the shed is utilized for trash barrels. Mr. Aylward stated that they are seeking to add only 54 square feet, which represents about 1.3% of lot coverage.

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

Mr. Foreman 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:

There were no previous Zoning Board of Appeals cases for the subject lot. The Premises is sited in the Single Residence District C, and comprises 4,515 square feet of area. Existing lot coverage by structures is 31.5%; the proposed lot coverage is 28.4%. Lot coverage greater than 20% and up to 25% is permissible by special permit; in this instance, the Premises is pre-existing, nonconforming for lot coverage; and the lot coverage is being reduced. The lot coverage by structures/parking/paving is 48.6%; the proposed is 44.4%. Total lot coverage by structures, paving and parking up to 40% is allowed by right; in this instance, the Premises is pre-existing, nonconforming for lot coverage by structures/parking/paving; and that lot coverage is being reduced. The lot comparison data submitted into the record indicates 3 neighboring dwellings that exceed the lot coverage by structures of 25%, and 8 neighboring dwellings that exceed lot coverage by structures of 20%.

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 is being reduced from 31.5% to 28.4%; lot coverage by structures/parking/paving is being reduced from 48.6% to 44.4%.

- B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with neighboring single-family residences. Two abutters issued letters of support; no opposition was expressed.
- C. There will be no impact on traffic flow and safety.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the dwelling is a single story, and that the addition is 54 square feet, filling in the southwest corner of the dwelling.
- E. There will be no impact on sewage disposal, source of water, and drainage; the addition is not proximate to the leach pit.
- 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 site plan review by the Planning Board, and they issued no comment on March 27, 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 bathroom 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 to the neighborhood.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, 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. Foreman, and seconded by Mr. Potamis, to grant a special permit, with conditions, under Section(s) 240-3.C. of the Code of Falmouth, at 68 Silver Beach Avenue, North Falmouth, Massachusetts (the "Premises"), to allow installation of a 6-foot by 9-foot bathroom addition, sited 13.2 feet from westerly side, and 12.9 feet from the southerly side lot lines. 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:
 - "Certified Plot Plan" for Paula Aylward, 68 Silver Beach Avenue, Falmouth, MA, prepared by Warwick & Associates Inc., 63 Country Road, Box 801, North Falmouth, MA, dated 3/14/19
 - "Bathroom Design, Aylward Residence, 68 Silver Beach Ave., North Falmouth, MA", prepared by Designs by SPB, Pocasset, MA, including sheets A1 and S1, dated 1-6-19
2. The bathroom addition will be sited 13.2 feet from westerly side, and 12.9 feet from the southerly side lot lines, in compliance with the 10-foot setback requirement.
3. The deck to the east side of the shed will be removed.

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 insure that stormwater is not discharged from the Premises, in consultation with Town Engineering.

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.



Robert B. Dugan, Acting Clerk, Zoning Board of Appeals

TOWN CLERK
MAY 10, 2019 PM 4:17
RECEIVED

Date Filed With Town Clerk