



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO.: 023 -19

APPLICANT/OWNER: David P. Berube
2 Shannon Lane, Mansfield, Massachusetts

SUBJECT PROPERTY: 34 Ocean View Avenue, North Falmouth, Massachusetts
Assessor's Map: Map 04A, Section 06, Parcel 000, Lot 051C

DEED/CERTIFICATE: Book 29547, Page 250

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On April 24, 2019, the Applicant filed an application with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3C and 240-69 E. of the Code of Falmouth, to allow construction of expanded living space into the existing porches, loft space with a balcony in the attic, plus a single-story addition to the easterly side of the dwelling, at 34 Ocean View 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. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on June 6, 2019, at which hearing relevant testimony was heard.

5. Steven Cook, Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA, appeared, representing David P. Berube, 34 Ocean View Avenue, North Falmouth, Massachusetts, owner (the "Applicant"). Mr. Cook discussed the request for special permit with the Board.

6. The public hearing was closed on June 6, 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.

7. 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):

- Letter for representation, by email from David and Marsha Berube, dated March 31, 2019
- "Neighborhood Comparison for 34 Ocean View Avenue", prepared by Steve Cook, dated 4/30/2019

Letters/E-mails from Abutters/Interested Parties:

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 5/28/19 (project must not direct stormwater off property, and address must be visible from the street)
- Conservation Commission, no comments, dated 4/29/19
- Board of Health, comments, dated 5/15/19; defer to Wastewater Superintendent, due to New Silver Beach sewer service area
- Wastewater: dated 5/28/2018 (sic), expansion beyond three bedrooms is not allowed by-right. Requires a variance from the Board of Selectmen to add a bedroom.
- Water, reports service requires upgrading to 1-inch service line, dated 4/26/2019
- Assessors, no comments, dated 4/30/19
- Fire Department, no comments, dated 4/29/19
- Planning, no comments, dated 4/26/19

Plans submitted by Applicant/Applicant's Representative

- "Site Plan for David Berube #34 Ocean View Avenue, Falmouth, MA", prepared by Warwick & Associates Inc., 63 Country Road, Box 801, North Falmouth, Mass, dated August 29, 2018
- "Existing Condition Plan for Berube Residence, First and Second Floor Plan, sheet EX1", "Right and Front Elevation, sheet EX2", "Basement Plan with Rear and Left Elevation, sheet EX3", all dated 4/24/2019, and prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA
- "New Addition/Remodeling for Berube Residence, First, Second and Attic Floor Plan, sheet A1, rev. dated 6/5/2019; "Front and Right Elevation, and Basement Plan, sheet A2, dated

4/24/2019; "Left and Rear Elevation, sheet A3", dated 4/24/2019, all prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA

June 6, 2019

Hearing:

Steven Cook appeared with the Applicant and builder. Mr. Cook explained that the house was originally constructed in 1905. However, the house is not up to code, and the layout is chopped up. They are seeking to expand the living space into a portion of the porch, and create a first floor master bedroom through an addition to the easterly side of the dwelling. The house is currently only 4.4' from north side lot line, where 10 feet is required, and the dwelling is 10 feet from the street, plus steps which will be 8 feet from the street, where a 25-foot setback is required. The renovations to the north and west will be within the existing footprint. The new addition will be 5.5 feet from the northerly property line, which is further set back from the side lot line than the existing house. The lot coverage by structures is increasing from 18.1% to 24.3%, due to the new addition. The dwelling is planned to remain as a 3-bedroom dwelling, due to Town sewer. The ridge height is increasing to 32 feet, 11 ¾ inches from 29-30 feet. One bedroom on the second floor will become a study. There is an existing shed, sited 1.1 feet from the north, and 5.8 feet from the east side lot lines. The shed is nonconforming due to the encroachment into the setbacks, but is scheduled to remain, without change.

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

There was no previous Zoning Board of Appeals case for the Premises.

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

The Premises is sited in the Single Residence District C, and comprises 9,098 square feet of area. The existing lot coverage by structures is 18.1%; the proposed lot coverage is 24.3%. Lot coverage by structures is allowed up to 25%, by special permit from the Zoning Board of Appeals. The lot coverage by structures/parking/paving is 21.7%. The proposed lot coverage by structures/parking/paving is 27.9%. Total lot coverage by structures, paving and parking up to 40% is allowed.

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 comprises 9,098 square feet, and lot coverage by structures is being increased to 24.3%. According to the neighborhood comparison data, 14 of 21 dwellings currently exceed the 20% lot coverage, with 8 dwellings exceeding the lot coverage proposed for 34 Ocean View Avenue.

- B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with neighboring single-family residences, and no one appeared in opposition to the proposal.
- 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 there will be only a 3-4-inch increase in height, and the addition will comprise a single story.
- E. There will be no impact on sewage disposal, source of water, and drainage; the reconstruction will not alter the three-bedroom count. The dwelling is on the New Silver Beach sewer service area, and is limited to three bedrooms.
- 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 April 26, 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 changes and addition to the dwelling 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. Dugan, and seconded by Mr. Van Keuren, to grant a special permit, with conditions, under Section(s) 240-3C and 240-69 E. of the Code of Falmouth, for 34 Ocean View Avenue, North Falmouth, Massachusetts (the "Premises"), to allow construction of expanded living space into the existing porches, loft space with a balcony in the attic, plus a single-story addition to the easterly 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:
 - "Site Pan for David Berube #34 Ocean View Avenue, Falmouth, MA", prepared by Warwick & Associates Inc., 63 Country Road, Box 801, North Falmouth, Mass, dated August 29, 2018
 - "New Addition/Remodeling for Berube Residence, First, Second and Attic Floor Plan, sheet A1, rev. dated 6/5/2019; "Front and Right Elevation, and Basement Plan, sheet A2, dated 4/24/2019; "Left and Rear Elevation, sheet A3", dated 4/24/2019, all prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA

2. The bedroom count is limited to three due to the New Silver Beach sewer service area.
3. The study on the second floor shall have a minimum 4-foot cased opening.
4. The Applicant shall submit an As-Built plan to the Zoning Board of Appeals.
5. 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.
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, Zoning Board of Appeals

RECEIVED

JUL 5 2019 PM 2:35

TOWN CLERK 

Date Filed With Town Clerk