



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO.: 028 -19

APPLICANT/OWNER: Paul Fitzgerald  
314 Dover Road, Westwood, Massachusetts

SUBJECT PROPERTY: 16 Massachusetts Avenue, Falmouth, Massachusetts  
Assessor's Map: Map 46B, Section 18, Parcel 010, Lot 000A

DEED/CERTIFICATE: Book 30119, Page 280

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On May 1, 2019, an application was filed with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3 of the Code of Falmouth, to convert an existing deck to living space, with a roof deck above, at 16 Massachusetts Avenue, 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 previous Zoning Board of Appeals cases for the Premises included #29-98, for the former bed and breakfast, and an Administrative Approval from May 8, 2007, for a brick patio and hot tub, limiting lot coverage by structure and paving to 41.31%
4. The advertised public hearing was opened on June 27, 2019, at which hearing, relevant testimony was heard.

5. Geoffrey S. Nickerson Esq., Oppenheim & Nickerson, LLP, 156 Locust Street, Falmouth, MA appeared before the Board, representing Paul and Barbara Fitzgerald, 314 Dover Road, Westwood, Massachusetts (the "Applicant"), as to 16 Massachusetts Avenue, Falmouth, MA (the "Premises"). Mr. Nickerson discussed the request for special permit with the Board.

6. The public hearing was closed on June 27, 2019, wherein the Zoning Board of Appeals, consisting of Kenneth H. Foreman, Acting Chairman, Edward Van Keuren, Member, Robert B. Dugan, Acting Clerk, Gerald Potamis, Member, and Mary Barry, Associate 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):

- Email for representation, by Barbara Fitzgerald, dated June 27, 2019
- "Lot Coverage/Bulk Calculations Worksheet", submitted with the June 20, 2019 letter from Mr. Nickerson

Letters/E-mails from Abutters/Interested Parties: None

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 (stormwater management required)
- Conservation Commission, no comments, dated 6/5/19
- Board of Health, comments, dated 5/15/19, (septic system plan adequate for 4-bedroom dwelling)
- Water, no comments, dated 5/3/2019
- Assessors, no comments, dated 5/6/19
- Fire Department, no comments, dated 5/3/19
- Planning, no comments, dated 5/3/19

Plans submitted by Applicant/Applicant's Representative

- "Certified Plot Plan for 16 Mass. Ave., Falmouth, MA", prepared by J.M. O'Reilly & Associates, Inc., 1573 Main Street, Brewster, MA, rev. dated 6-20-19
- "Fitzgerald Residence, 16 Massachusetts Ave., Falmouth, MA", including sheets A-1.0, A-1.1, A-2.0, A-2.1, EX-1.0, and EX-1.1, all prepared by Pacheco Robb Architects, LLC, Boston/Provincetown, and dated 4/29/19. Sheet A-2.2 dated 10/29/19 (sic).

June 27, 2019

Hearing:

Attorney Geoffrey Nickerson appeared before the Board, representing Paul and Barbara Fitzgerald, (the "Applicant"), and showed the Board existing condition photographs. He explained that the front (southerly) deck will be converted into habitable space, with a 3 season room and a roof deck above. Relief is being applied for under 240-3 C. The dwelling was built in 1924, prior to zoning in Falmouth. There are many existing nonconformities, including a street setback of 2.1 feet, where 25 feet is required. The dwelling is 7.7 feet from the north, 1.3 feet from the east, and 59.3 feet from the south, in a district requiring a minimum 10-foot side and rear yard setback. The dwelling also has 3 stories; the limit is now 2.5 stories. This property was formerly used as a bed and breakfast. The lot coverage is nonconforming, but will be slightly reduced by 0.3%, through this project. No new nonconformities will be created. It meets the criteria of 240-216. Mr. Nickerson submitted bulk calculations to the file. There was a concern from the Board of Health regarding the proximity of the proposal to the existing septic components, and the possible need for sonotubes. Mr. Nickerson discussed an email in response to the Board of Health concern, and reported that the Board of Health appears to now be in support of the plan. The project architect confirmed that the existing structure is 3 feet from the septic components. The work proposed will be on the southerly side of the dwelling, away from the abutter to the north.

Acting Chairman Foreman 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. Dugan seconded the motion. The motion carried 5-0. Mr. Foreman closed the hearing.

FINDINGS

The previous Zoning Board of Appeals cases for the Premises included #29-98, for the former bed and breakfast, and an Administrative Approval from May 8, 2007, for a brick patio and hot tub, limiting lot coverage by structure and paving to 41.31%.

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 8,715 square feet of area. The existing lot coverage by structures is 34.2%; the proposed lot coverage is 33.9% (representing a slight decrease). The lot coverage by structures exceeds the current maximum lot coverage of 25%; however, that is related to the age of the structure (1924). The existing lot coverage by structures/parking/paving is 51.8 %, and the proposed is 51.5% (representing a slight decrease). Total lot coverage by structures, paving and parking up to 40% is allowed; however this appears to be related to the age of the structure.

The Premises has three stories; the By-Law now limits dwellings to 2.5 stories.

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 8,715 square feet of area, and lot coverage is proposed to be 33.9% (representing a 0.3% reduction in lot coverage). This lot size and coverage is within the range of area properties reported, where 12 other properties exceed 20% lot coverage.

B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with neighboring single-family residences. One abutter inquired about the proposal, and requested no on-street parking during construction, due to the narrow nature of the roadway.

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 existing dwelling is 34 feet, 4 inches in height, and the proposed work represents a single story, with a deck above.

E. There will be no impact on sewage disposal, source of water, and drainage; the construction does not alter the bedroom count. The proposal includes living area plus a sunporch.

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

G. There was no requirement for site plan review by the Planning Board, and they issued no comment on May 3, 2019.

H. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for any nonconformities stated herein.

I. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed 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) 240-3 of the Code of Falmouth, for 16 Massachusetts Avenue, Falmouth, Massachusetts (the "Premises"), to allow the conversion of a deck into habitable space including living area, plus a sunporch, with a deck above, for the pre-existing nonconforming 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:
  - "Certified Plot Plan for 16 Mass. Ave., Falmouth, MA", prepared by J.M. O'Reilly & Associates, Inc., 1573 Main Street, Brewster, MA, rev. dated 6-20-19

- "Fitzgerald Residence, 16 Massachusetts Ave., Falmouth, MA", including sheets A-1.0, A-1.1, A-2.0, A-2.1, EX-1.0, and EX-1.1, all prepared by Pacheco Robb Architects, LLC, Boston/Provincetown, and dated 4/29/19. Sheet A-2.2 dated 10/29/19 (sic).
2. The addition shall be no closer to Massachusetts Avenue than 2.3 feet, and is proposed to be on sonotubes, no closer than 3 feet from septic components.
  3. Construction vehicles shall not park on Massachusetts Avenue.
  4. Construction hours are limited to 7 a.m.-7 p.m. Monday-Friday; 8 a.m. -12 p.m. on Saturday; no Sundays or holidays.
  5. The Applicant shall comply with the engineering request for provision of mitigation to manage stormwater runoff for the roof area. The project must not direct stormwater runoff on to public or private properties.
  6. The Applicant shall submit an As-Built plan to the Zoning Board of Appeals.
  7. 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.
  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. Dugan, Acting Clerk

Falmouth Zoning Board of Appeals

RECEIVED  
JUL 11, 2019 PM 4:20  
TOWN CLERK

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**Date Filed With Town Clerk**