



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO: #037-19

APPLICANT/OWNER: 24 Spencer Baird Road Nominee Trust, Stephen E. Gellis, Trustee

SUBJECT PROPERTY: 24 Spencer Baird Road, Woods Hole, MA

Assessor's Map: Map 49A Section 06 Parcel 000D Lot 044

DEED/CERTIFICATE: Book 15686, Page 57

SUMMARY: Special Permit issued with conditions

PROCEDURAL HISTORY

1. On May 31, 2019, the Applicant filed an application with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3C of the Code of Falmouth, to add a dormer to the southerly side of the dwelling, on subject property at 24 Spencer Baird Road, Woods Hole, 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.
4. The advertised public hearing was opened on July 18, 2019, at which hearing, relevant testimony was heard. The hearing was continued to August 1, 2019.
6. The public hearing was closed on August 1, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Edward Van Keuren, Robert B. Dugan, Gerald Potamis, and Mary T.

Barry, 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 from Abutters/Interested Parties None

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

- Attorney Jonathan M. Polloni submitted an application, owner authorization, narrative and filing fee, dated May 31, 2019
- Attorney Polloni submitted 'Lot Coverage Calculations' sheet, date stamped received July 12, 2019
- Letter submitted by William F. Roslansky, Architect, dated July 23, 2019 regarding definition of habitable space
- Attorney Polloni submitted 'Section R304 – Minimum Room Areas' and 'Section R305 – Ceiling Height' not dated.

Letters/Referrals/E-mails from Town Departments

**Referrals were sent to the following departments: Assessors, Building, Conservation, Engineering, Health, Fire Department, Planning, Board of Selectmen, Water and Wastewater**

- Email from Wastewater Superintendent, Amy Lowell, dated June 3, 2019 stating: *The Board of Selectmen voted a variance under the flow neutral bylaw on April 22, 2019 for proposed work at 24 Spencer Baird Road*
- Email from Health Agent, Scott McGann, dated June 3, 2019 noting that the Board of Health voted a positive referral for 24 Spencer Baird Road
- Referral from Conservation, dated July 5, 2019 – no comment
- Referral from Falmouth Fire Department, dated June 10, 2019 – no comment
- Referral from the Water Department, dated June 3, 2019 – no comment
- Referral from Assessors, dated June 3, 2019 – no comment
- Referral from the Planning Department – no comment
- ZBA staff submitted Variance Approval for Flow Neutral Bylaw, dated April 25, 2019

Plans submitted by Applicant/Applicant's Representative

- 'Plot Plan of Proposed Renovation' prepared for 24 Spencer Baird Road Nominee Trust, Lot #44, #24 Spencer Baird Road in Falmouth, dated February 15, 2019 with a final revision date of June 11, 2019, drawn by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, MA 02540 and signed by Michael B. McGrath, PLS;
- 'Existing Floor Plans' Sheet A-2 Gellis Existing, dated May 30, 2019, 24 Spencer Baird Rd. Woods Hole, MA, drawn by William F. Roslansky 26 Albatross Street, Woods Hole, Massachusetts, 02543;

- 'Existing' Sheet A-1, Gellis Existing, dated May 30, 2019, 24 Spencer Baird Rd. Woods Hole, MA, drawn by William F. Roslanksy 26 Albatross Street, Woods Hole, Massachusetts, 02543;
- 'Addition' Sheet A-1, Gellis Addition, dated July 26, 2019, with a revision date of September 10, 2018, 24 Spencer Baird Rd. Woods Hole, MA, drawn by William F. Roslanksy 26 Albatross Street, Woods Hole, Massachusetts, 02543;
- 'Addition' Sheet A-2, Gellis Addition, dated July 26, 2019, with a revision date of September 10, 2018, 24 Spencer Baird Rd. Woods Hole, MA, drawn by William F. Roslanksy 26 Albatross Street, Woods Hole, Massachusetts, 02543.

Hearing:

July 18, 2019

Mr. Dugan read the Notice of Public Hearing and referrals into the record.

Jonathan M. Polloni, Esq., 419 Palmer Avenue, Falmouth, MA appeared before the Board, representing Stephen E. Gellis, Trustee, 24 Spencer Baird Road Nominee Trust, 25 Kodaya Road, Waban, MA (the "Applicant"). Mr. Polloni explained that the Applicants would like to increase the habitable space in the attic, at 24 Spencer Baird Road, Woods Hole, MA (the "Premises"). The Applicants received a variance on April 25, 2019, under the flow neutral By-Law, as it is on Town sewer. The lot comprises 8,857 square feet of area, and nonconformities include exceeding lot coverage (25.5% where 20% is allowed), steps that encroach into the front yard setback (19.5 feet instead of 25 feet), and a garage that encroaches into the south side lot line (5.3 feet instead of 10 feet) and east side lot line (6 feet instead of 10 feet) lot lines. Mr. Pollini stated that the Applicants are applying under 240-3C, to increase habitable space. They plan to install 2 dormers, facing the rear (south) of the property, to accommodate bedrooms. The installation of the dormers will slightly increase the height of the dwelling to 31 feet, 9 inches; not exceeding the 35 foot height limit.

Mr. Polloni reported that the Building Commissioner disagreed on the definition of habitable space; his opinion was that habitable space should go to the wall under the ceiling where the slope comes down. Mr. Pollini stated there is some confusion on how this space is viewed, between Building Code and Zoning Code. He also reported that he looked at the sanitary code which may conflict with the others.

The Board inquired about the use of the space that is under 5 feet in height, under the sloped roof. Mr. Pollini replied that the space could be utilized for chairs, blankets or toys.

Rod Palmer, Building Commissioner, stated that the 5-foot height requirement is for design purposes, and that space below that height cannot be recognized as habitable space. The rooms or areas that have ceiling heights less than 5 feet cannot be part of the minimum 70 square foot room size.

Mr. Pollini reported that he submitted lot coverage calculations, and found at least 5 other houses that have dormers; 2 of which have 2.5 stories. Seventeen dwellings exceed 20% lot coverage. He noted that the proposal fits within the character of the neighborhood.

The Board noted furniture placement under the 5-foot clearance area, and discussed the use as habitable space.

No one further appeared on the application.

Mr. Dugan made a motion to continue to August 1, 2019 at 6:30 PM, which was seconded by Mr. Van Keuren, and voted unanimously.

Notice of the continuance was posted at the Town Clerk's office, and on the Town's website.

#### August 1, 2019

Mr. Polloni returned before the Board, to discuss the habitable space proposed for the attic. He reported that the Applicants did not want to wall off the area with less than five feet of clearance, noting that there are skylights proposed to add light in that area. Mr. Polloni requested that the Board approve the project as proposed, with the understanding that the portion of the room with less than 5 feet clearance, does not count as habitable space. Mr. Polloni noted that the space will be used as a children's room. He reported that they have prepared an alternative proposal, where the architect added a 2-foot knee wall, if required.

The Board discussed their satisfaction with the explanation. Mr. Potamis made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

#### 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 8,857 square feet of area. The existing and proposed lot coverage by structures is 25.5%. Lot coverage by structures is allowed up to 25%, by special permit from the Zoning Board of Appeals. The current and proposed lot coverage by structures/parking/paving is 39.8%. Total lot coverage by structures, paving and parking up to 40% is allowed. The Premises is nonconforming due to lot coverage, as well as the existing encroachment of the steps of the dwelling into the street setback, and the encroachment of the garage into the south and east side and rear yard setbacks.

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 8,857 square feet, and lot coverage by structures exists as 25.5%. According to the neighborhood comparison data, 3 other dwellings are currently 2.5 stories, and 17 dwellings 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, 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 the change comprises a dormer to the rear (south) of the dwelling, with a height measuring 31 feet, 9 inches from mean grade.

E. The existing dwelling is connected to the municipal sewer service, and the Board of Selectmen have approved the increase in the wastewater design. Bedroom count is limited to six.

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 June 3, 2019.

H. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the 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 dormer 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 of the Code of Falmouth, for 24 Spencer Baird Road, Woods Hole, Massachusetts (the "Premises"), to allow construction of a dormer to the southerly 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:

- 'Plot Plan of Proposed Renovation' prepared for 24 Spencer Baird Road Nominee Trust, Lot #44, #24 Spencer Baird Road in Falmouth, dated February 15, 2019 with a final revision date of June 11, 2019, drawn by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, MA 02540 and signed by Michael B. McGrath, PLS;
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2. The bedroom count is limited to six.

3. The height shall be 31 feet, 9 inches.

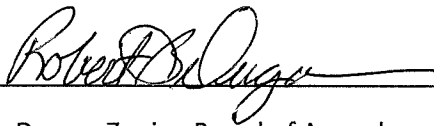
4. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

5. 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: 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, Zoning Board of Appeals

RECEIVED  
AUG 14, 2019 PM 1:36  
TOWN CLERK

Date Filed With Town Clerk