



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: #041-19

APPLICANT/OWNER: John L. Banner, III

7 Toledo Street, Teaticket, Massachusetts

SUBJECT PROPERTY: 7 Toledo Street, Teaticket, Massachusetts

Assessor's Map: Map 39A Section 22 Parcel 000 Lot 004

DEED/CERTIFICATE: Book 00715 Page 0097

SUMMARY: Special Permit granted, with conditions

PROCEDURAL HISTORY

1. On June 17, 2019, the Applicant filed an application with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3C and 240-23 I of the Code of Falmouth, to modify the decision of the Zoning Board of Appeals #92-18, by permitting an Accessory Apartment within a detached structure, at 7 Toledo 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 previous Zoning Board of Appeals cases for the Premises involved 1) the grant of a Special Permit #145-99, issued to construct a dwelling on the undersized lot, and 2) the grant of a Special Permit, filed with the Town Clerk on December 20, 2018, for a detached garage with habitable space above. The decision was conditioned on no cooking facilities in the habitable space, where the lot contains 7,200 square feet and the By-Law required a minimum of 7,500 square feet of lot area for an accessory apartment.

4. The advertised public hearing was opened on August 1, 2019, at which hearing, relevant testimony was heard.

6. The public hearing was closed on August 1, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Kenneth H. Foreman, Edward Van Keuren, Robert B. Dugan, and Gerald Potamis, 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)

- John L. Banner, III, the "Applicant" submitted application and filing fee on June 17, 2019
- ZBA staff submitted previous special permit #092-18, filed with the Town Clerk December 20, 2018

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

- Referral from the Planning Department stating: *The applicant [sic] for a site plan review and is on the July 23rd PB agenda, dated June 18, 2019 signed by Planning Board staff*
 - Planning Board issued Site Plan Review Decision dated July 25, 2019
- Referral from Fire Department, dated June 20, 2019 – no comment
- Referral from the Water Department stating: *If water need [sic] to apartment separate water service is required, dated June 19, 2019 signed by Greg Powers*
- Email from Wastewater Department, Superintendent stating: *7 Toledo is in the Little Pond Sewer Service Area. The flow neutral bylaw allows an increase in the number of bedrooms on a single family residential lot in a sewer service area to 4 by right. The building hasn't actually connected to sewer yet – sewer connection permit application was submitted this week. The sewer connection plan appears to place much of the gravity pump, the pump and discharge pipe in the footprint of the proposed accessory apartment. I would recommend laying out the pipes and pump to minimize the amount of rework required if this accessory apartment is permitted. Obviously, if the accessory apartment is permitted, it will need to be connected to the sewer and a sewer connection modification permit will be required from the Wastewater Division, dated June 21, 2019*
- Referral from Assessors: *Includes lots 4, 5 & 6, not dated, signed by Patricia Favulli, Director of Assessing*

Plans submitted by Applicant/Applicant's Representative

- 'Plot Plan' for 7 Toledo Street, Falmouth MA drawn by Stephen Doyle & Associates P.O. Box 621 East Falmouth, Massachusetts 02536, dated September 15, 2018 with a final revision date of May 20, 2019, stamped and signed by Stephen J. Doyle PLS

- ‘Cover Sheet’ John Banner 7 Toledo St-Falmouth drawn by Longfellow Design Build sheet A0.0 dated September 18, 2018 – not signed or stamped;
- ‘Exterior Elevations’ John Banner 7 Toledo St-Falmouth drawn by Longfellow Design Build sheet A2.0 dated September 18, 2018 – not signed or stamped;
- ‘First Floor Plan – Garage Proposal’ John Banner 7 Toledo St-Falmouth drawn by Longfellow Design Build sheet A0.0 dated September 18, 2018 not signed or stamped; and
- ‘First Floor Plan’ and ‘Second Floor Plan’ Sheet A1 New House for: Mr. Banner Toledo Street Falmouth, MA, drawn by Cotuit Bay Design, 43 Brewster Road, Mashpee, MA. 02649 – not stamped or signed.

Hearing:

August 1, 2019

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

John Banner, III, 7 Toledo Street, Teaticket, Massachusetts (the “Applicant”) appeared before the Board, and stated that the current proposal is the same presentation as was provided in November 2018, for a detached garage, with a bedroom above. Mr. Banner III noted that the original proposal for an Accessory Apartment (#092-18) was denied, due to the fact that the Premises consisted of 7,200 square feet of area, and the By-Law required a minimum lot size of 7,500 square feet. He stated that at the April 2019 Town Meeting the Town voted to reduce the minimum lot size to 7,000 square feet for Accessory Apartments on lots in sewer service areas. Mr. Banner III stated that the Planning Board issued Site Plan Review for the Accessory Apartment, and that he is now requesting a special permit from the Zoning Board of Appeals.

Mr. Banner III confirmed that there would be no modification to the main house; the Accessory Apartment will be sited above the detached garage. He reported that the resultant total lot coverage would be 24.8%. There will be three bedrooms in the main house, and a single bedroom in the Accessory Apartment over the garage. Mr. Banner III pointed out that there is an existing gravel driveway, which is sufficient for parking four vehicles.

The Board inquired about whether a second means of egress was required for the Accessory Apartment. Mr. Banner III stated he would inquire with the Building Department.

No one further appeared in favor of, or opposition to the proposal.

Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

FINDINGS

The previous Zoning Board of Appeals cases for the Premises involved 1) the grant of a Special Permit #145-99, issued to construct a dwelling on the undersized lot, and 2) the grant of a Special Permit #092-18, filed with the Town Clerk on December 20, 2018, for a detached garage with habitable space above. That decision was conditioned on no cooking facilities in the habitable space, where the lot contains 7,200 square feet, and the By-Law required a minimum of 7,500 square feet of lot area for an accessory apartment. Following the most recent change to the By-Law, the Premises is now entitled to propose an Accessory Apartment, which shall be connected to the Town sewer.

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 7,200 square feet of area. The proposal is to construct a single-car garage, with an Accessory Apartment above. The lot coverage by structures will be 24.8%, following the removal of the shed at the southeast, and steps to the existing deck, at the southerly side. Lot coverage by structures is allowed up to 25%, by special permit from the Zoning Board of Appeals. Total lot coverage by structures, paving and parking will be 39%, where up to 40% is allowed. The Premises is nonconforming due to the existing encroachment of the southerly steps from the deck into the southerly (rear) lot line setback, and the encroachment of the northerly steps into the street setback. The Premises comprises 7,200 square feet, where the minimum lot size is 40,000 square feet.

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 7,200 square feet, and lot coverage by structures will be 24.8%. There is sufficient space for on-site parking.
- 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 single car garage with Accessory Apartment above, site to the east of the existing dwelling, with a height measuring 20 feet, 4.5 inches.
- E. The existing dwelling is connected to the Little Pond sewer service area, and the Accessory Apartment shall also be connected to Town sewer. The Accessory Apartment is limited to one bedroom, and the main dwelling is limited to three bedrooms.
- F. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- G. The Planning Board issued Site Plan Review on July 25, 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 Accessory Apartment for 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. Potamis, to grant a special permit, with conditions, under Section(s) 240-3C and 240-23 I of the Code of Falmouth, for 7 Toledo Street, Teaticket, Massachusetts (the "Premises"), to allow an Accessory Apartment above the single car garage. 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' for 7 Toledo Street, Falmouth MA drawn by Stephen Doyle & Associates P.O. Box 621 East Falmouth, Massachusetts 02536, dated September 15, 2018 with a final revision date of May 20, 2019, stamped and signed by Stephen J. Doyle PLS
 - 'Cover Sheet' John Banner 7 Toledo St-Falmouth drawn by Longfellow Design Build sheet A0.0 dated September 18, 2018 – not signed or stamped;
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2. The lot coverage by structures is limited to 24.8%. If a second means of egress is required, this must be accomplished within the approved lot coverage.
3. The bedroom count is limited to one within the Accessory Apartment, and three within the main dwelling.
4. The Accessory Apartment shall be connected to Town Sewer, in accordance with a sewer modification permit from the Wastewater Division and a separate water line.
5. The height of the Accessory Apartment shall be 20 feet, 4.5 inches.
6. The By-Law requires that either the Accessory Apartment or the principal dwelling be owner-occupied for a period of seven months every calendar year. In the owner's absence, only one dwelling unit may be rented. An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period of seven months and not otherwise rented as set forth in the By-Law.
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, Zoning Board of Appeals

RECEIVED
AUG 19, 2019 PM 4:22
TOWN CLERK

Date Filed With Town Clerk