



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE PERMIT NO: 004-20

APPLICANT/OWNER: Michael R. Garfield, Trustee of the Garfield Realty Trust
142 Pelham Island Road, Wayland, Massachusetts

SUBJECT PROPERTY: 85 Fay Road, Woods Hole, Massachusetts

Assessor's Map: Map 51 Section 03 Parcel 000 Lot 008

DEED/CERTIFICATE: Certificate No. 164976

SUMMARY: Special Permit granted, with conditions

PROCEDURAL HISTORY

1. On January 15, 2020, an application was filed by Michael R. Garfield, Trustee, Garfield Realty Trust, 142 Pelham Island Road, Wayland, Massachusetts (the "Applicant") with the Zoning Board of Appeals, requesting a special permit and modification of Special Permit #33-07 to construct additions on to the existing cottage, at 85 Fay 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. The advertised public hearing was scheduled to open on March 5, 2020; however, Laura M. Moynihan, attorney for the Applicant, requested that the hearing be continued to April 2, 2020, due to the absence of a Board member. The "Agreement for the Extension of the Statutory Hearing, Decision and Filing Deadline" was executed by both parties, and filed with the Town Clerk on March 6, 2020. On

April 2, 2020, Board members voting included Terrence J. Hurrie, Kenneth Foreman, Robert B. Dugan, Edward Van Keuren, and James Morse.

4. Laura M. Moynihan, 17 Academy Lane, Suite 1, Falmouth, MA appeared before the Board, representing the Applicant.

5. The public hearing was closed on April 2, 2020, following a motion made by Mr. Dugan, seconded by Mr. Morse, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

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

- Laura Moynihan, Attorney for applicant submitted an application for a special permit, filing fee, owner authorization and appropriate plans; application was filed with the Town Clerk on January 15, 2020
- Special Permit No. 33-07
- Engineer / Designer Signoff dated November 26, 2007; Board date 'received' stamp of January 15, 2020
- Certificate of Compliance dated January 9, 2008; Board date 'received' stamp of February 15, 2020
- Signed Affidavit of Michael R. Garfield – dated February 20, 2020
- Signed waiver extension, filed with the Town Clerk on March 6, 2020

Letters/Referrals/E-mails from Town Departments

- Referral dated January 23, 2020 from the Water Department, signed by Greg Powers: *Water service must be upgraded to Town specifications*
- Referral dated January 22, 2020 from the Planning Department – no comment
- Referral dated January 23, 2020 from the Fire Department – no comment
- Referral dated January 29, 2020 from the Health Department, signed by Scott McGann, Health Agent: *Cottage has an existing 3 bedroom septic system*
- Referral dated January 28, 2020 from the Assessor's – no comment
- Referral dated February 18, 2020 from the Engineering Department, signed by Scott Schluter, PE with standard comments; comply with section 99-1 Affixing of legible numbers required; time limit for compliance

Letters/E-mails from Abutters/Interested Parties

- Letter dated January 22, 2020, signed by Ari Soroken – 77 Fay Road, Woods Hole
- Letter dated January 15, 2020, signed by Earl D. Osborn – 97 Fay Road, Woods Hole

Plans submitted by Applicant/Applicant's Representative

- 'Foundation Plan' sheet 1, 'Floor Plan' sheet 2, 'Framing Plan' sheet 3, 'North Elevation' sheet 10, 'East/West Elevation' sheet 9, 'South Elevation' sheet 8 (existing plans), prepared for Garfield Cottage, 85 Fay Road, Woods Hole, Ma – as drawn by Barbara Woll Jones, 38 Locust Street, Falmouth, Ma; plans are not dated, stamped or signed – Board dated 'received' stamp of January 15, 2020;

- ‘Proposed Plans’ sheet A-1 dated 01/24/2020, ‘Proposed Elevations’ sheet A-2 dated 12/26/19 prepared for the Garfield Residence, 85 Fay Road, Wood Hole, Mass. – as drawn by Chris Warner, Architect, 293 Gifford Street, Falmouth, Ma; plans are stamped and signed by Christopher B. Warner, RA; and
- ‘Plot Plan – Proposed Cottage Modifications’ dated December 3, 2019 prepared for Garfield Realty Trust, 85 Fay Road, Woods Hole, Falmouth, Massachusetts – as drawn by BSS Design Engineering and Surveying, plan is stamped and signed by Thomas Jackson Bunker, PLS

Hearing:

The Notice of Hearing and referrals were read into the record. Attorney Moynihan provided a Powerpoint presentation to the Board, and stated that 85 Fay Road, Woods Hole, Massachusetts (the “Premises”) has been in the family for decades. The structures were built in the 1920’s, and Ms. Moynihan reported that there was a second dwelling, identified as a cottage, on the lot prior to 1959, as was confirmed by the Board in its 2007 Decision. The main house and cottage on the 2.18 acre parcel have been continually used for family members.

Ms. Moynihan stated that there is proposed to be a 6.4-foot by 4.7-foot in-fill addition to the southerly side of the first floor of the cottage, to provide for a half bath. This will result in a .03% increase in lot coverage by structures, resulting in an increase from 3.55% to 3.58%. The cottage will then have one bedroom on the first floor, and a second floor expansion will provide two additional bedrooms, plus a bathroom. The existing height of 22.19 feet is proposed to remain the same. Ms. Moynihan noted that the property is used during the summer only, and that the two immediate abutters are in support of the proposal.

No one further appeared on the application. Following a motion made by Mr. Dugan, and seconded by Mr. Morse, the Board voted unanimously to close the hearing.

Findings:

The subject property, 85 Fay Road, Woods Hole, Massachusetts (the “Premises”), is sited in the Single Residence AA zoning district, and comprises 94,800 square feet of area landward of the stone riprap, (shown at the easterly area of the lot). The Premises has 85.78 feet of frontage on Fay Road. The existing lot coverage by structures is 3.55%, which will be increased to 3.58%. The existing lot coverage by structures/parking/paving is 10.51%, which will be increased to 10.54%. The Premises is currently improved by a main house, a cottage, and a shed. The two dwelling units were originally constructed in the 1920’s, and represent a pre-existing nonconforming use, where only one dwelling unit is now allowed according to the By-Law.

In 2007, the Board issued a special permit to allow the cottage with a studio unit to be reconstructed, with a single bedroom, as currently existed. The accessory structure was also nonconforming, as it was sited within the front yard of the main house. There was a condition placed that the cottage be for family use, and not rented out.

1. This application requests that the accessory structure in the front yard be expanded to allow for two more bedrooms plus a half bath. The height of the structure will remain slightly above the height allowance of 22 feet for a structure sited in the front yard at 22.19 feet, but this height will not be increased.

2. The footprint of the cottage will increase only slightly, due to a 6.4-foot by 4.7-foot in-fill addition.
3. There is limited visibility of the cottage from the street, and the two closest abutters have signed support letters.
4. The Applicant has testified that the accessory cottage has been used for family members primarily during the summer, and does not intend to rent.
5. There will be no increase in traffic flow or safety.
6. The Applicant agreed to provide a Title 5 inspection report for the cottage.
7. Referrals require an update of the water service, and proper posting of the address for the cottage, in compliance with requirements of the Department of Public Works.

In addition to the above findings, the Board finds that the proposed addition 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.

The Zoning Board of Appeals weighed the effects of the addition at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special 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, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 A and 240-3C of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted unanimously to grant a special permit, for the addition at 85 Fay Road, Woods Hole, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be substantially as shown on the plans:
 - 'Foundation Plan' sheet 1, 'Floor Plan' sheet 2, 'Framing Plan' sheet 3, 'North Elevation' sheet 10, 'East/West Elevation' sheet 9, 'South Elevation' sheet 8 (existing plans), prepared for Garfield Cottage, 85 Fay Road, Woods Hole, Ma – as drawn by Barbara Woll Jones, 38 Locust Street, Falmouth, Ma; plans are not dated, stamped or signed – Board dated 'received' stamp of January 15, 2020;
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2. The address shall be properly posted on the cottage as 85A, and at the intersection of the driveway and Fay Road, prior to final building department sign off, in accordance with §99-1.
3. The water service must be upgraded to Town specifications.

4. The Applicant shall provide Title 5 inspection for the cottage septic system prior to the issuance of a building permit.
5. The cottage shall not be rented, but shall continue to be utilized for family members.
6. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the Zoning Board of Appeals may deny the request.
7. 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, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit, and that any construction performed under the permit may be ordered undone.)
8. This special permit shall lapse three 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.

True Copy Attest:



Noreen H. Stockman, Zoning Administrator

RECEIVED
APR 22. 2020 AM 8:28
TOWN CLERK
Date Filed With Town Clerk