



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS

DECISION

CASE NO: 011-20

APPLICANT/OWNER: Henry M. and Anne DiGiorgio

66 Miller Street, Franklin, Massachusetts

SUBJECT PROPERTY: 86 Oak Street, Teaticket, Massachusetts

Assessor's Map: Map 39A Section 15 Parcel 000 Lots 162, 163

DEED/CERTIFICATE: Book 7953 Page 317

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On February 13, 2020, an application was filed by Henry M. and Anne DiGiorgio, 66 Miller Street, Franklin, Massachusetts, (the "Applicant") with the Zoning Board of Appeals, requesting a special permit to construct an addition at the northerly side (rear) of the dwelling; increasing lot coverage by structures over 20%, at 86 Oak 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 advertised public hearing was opened on April 2, 2020. Board members present included Terrence J. Hurrie, Kenneth Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry.
4. Michael McGrath, Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, 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. Foreman, seconded by Mr. Van Keuren, 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)

- Holmes and McGrath, representative for applicant – filed an application for a special permit, narrative, filing fee and appropriate plans; application was filed with the Town Clerk on February 13, 2020
- 'Bulk Coverage Analysis' with attached map, dated September 20, 2017; Board dated 'received' stamp of February 13, 2020
- Two (2) colored drawings – Board date 'received' stamp of February 13, 2020
 - 'Exhibit A' Existing Dec. 2019
 - 'Exhibit B' Proposed Dec. 2019

Letters/Referrals/E-mails from Town Departments

- Email dated February 14, 2020 from Wastewater Superintendent Amy Lowell: *No comment from WW Division. No sewer connection modification or flow neutral bylaw review required.*
- Referral from the Planning Department dated February 14, 2020 – no-comment
- Referral from the Fire Department dated February 20, 2020 – no comment
- Referral from Assessor's dated February 25, 2020 signed by Patricia Favulli, Director: *Includes lots 162 & 163*
- Referral from the Water Department dated February 24, 2020 signed by Greg Powers: *N/A Has existing 1" water service*
- Referral from the Conservation Commission dated March 9, 2020 signed by Conservation Agent: *Outside of jurisdiction*
- Referral from Engineering dated March 17, 2020 signed by Scott Schluter, PE with standard comments and recommendation to add drywells

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

Plans submitted by Applicant/Applicant's Representative

- 'Addition Design' sheets A1 and A2 dated January 28, 2020 prepared for DiGiorgio Residence, 86 Oak Avenue, Falmouth, Ma – as drawn by Designs by SPB, Pocasset, Ma – plans are not stamped or signed; and
- 'Plan of Existing Conditions' sheet 1 of 1 dated December 6, 2019, 'Plan of Proposed Addition' sheet 1 of 1, dated January 28, 2020, prepared for Henry and Anne DiGiorgio, Lot 162 & 163, 86 Oak Street in Falmouth – as drawn by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, Ma – plans are stamped and signed by Michael B. McGrath, PLS

Hearing:

Voting members: Hurrie, Foreman, Dugan, Van Keuren, and Barry

The Notice of Hearing and referrals were read into the record.

Michael McGrath, project engineer, appeared before the Board, as representative for Henry M. and Anne DiGiorgio, 86 Oak Street, Teaticket, Massachusetts, homeowners (the "Applicants"). Mr. McGrath stated that the Premises comprises 4,800 square feet of area, with the dwelling originally built in the 1950's. He noted that the Zoning Board of Appeals issued a special permit in 2005, to allow the overhang over the garage to be less than 25 feet from the street lot line. This property is nonconforming to both side and front yard setbacks. The existing lot coverage is 21.7%, and is proposed to be increased to just below 25%. Mr. McGrath stated that the addition is proposed for the rear of the Premises, and that there would not be an increase in the bulk. He stated that the proposal meets the criteria of By-Law section 240-216. A lot coverage analysis was submitted for the surrounding properties. Mr. McGrath summarized that there are 5 neighboring properties over 20% lot coverage, and that the average lot coverage was 21%. He reported that three neighboring dwellings exceeded the 25% lot coverage.

There was Board discussion around the issue that the previous special permit identified a lot coverage of 19.5%, but that the existing condition now lists lot coverage as 21.7%. Mr. McGrath noted that the plot plan had a revision date of 2/23/06, and surmised that the existing landing was widened since 2006, or possibly prior to the use and occupancy permit.

There was no public comment. Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Mr. DiGiorgio, the Applicant, requested an opportunity to address the Board.

Mr. Morse made a motion to re-open the hearing, which was seconded by Mr. Dugan, and unanimously voted.

Henry DiGiorgio explained that the 19.5% was the original lot coverage percentage. He reported that they appeared before the Board due to the fact that the dwelling was built too close to the street. Mr. DiGiorgio reported that the front stairs caused the increase in the lot coverage. He noted that he and his wife are both retired, and want to provide a little more room to reside in Falmouth.

Mr. Morse made a motion to close the hearing, which was seconded by Mr. Foreman, and unanimously voted.

Mr. Foreman made a motion to grant application #011-20, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject lot, 86 Oak Street, Teaticket, Massachusetts (the "Premises"), is sited in the Single Residence C zoning district, and comprises 4,800 square feet of area, in a district now requiring a minimum 40,000 square feet. The Premises has 60 feet of street frontage, in a district now requiring 100 feet of street frontage. The Premises was the subject of a special permit issued in 2006, to allow a change to the front yard setback for a pre-existing nonconforming structure, due to a cantilevered second floor being sited 23.9 feet from the street. The Premises is sited in the Great Pond Coastal Pond Overlay District, and comprises four bedrooms, with garage parking underneath. The dwelling is sited 9.9 feet from the easterly side lot line, and there is a landing sited 8.6 feet from the westerly side lot line, in a district requiring a 10-foot side yard setback. The landing is also sited 20.2 feet from the street, where the district minimum setback from the street is 25 feet.

- 1) There will be no increase to the three bedrooms, and the Premises is on Town sewer.
- 2) The lot coverage by structures will increase from 21.7 to 25%. Lot coverage by structures/parking/paving will increase from 31.4% - 34.7%, yet remains within the neighboring properties comparatively; there are three other homes on larger parcels with larger bulk calculations.
- 3) The 12-foot by 15-foot single story den addition requires a special permit, due to existing encroachments into the side yards and front yard setbacks, and lot coverage exceeding 20%.
- 4) The modest addition will be at the rear of the Premises, and will not block views or vistas.
- 5) Increases utilization of property.

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 C and 240-69 E. of the General Code of Falmouth, following a motion made by Mr. Foreman, and seconded by Mr. Van Keuren, voted unanimously to grant a special permit, for the addition at 86 Oak Street, Teaticket, 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:
 - 'Addition Design' sheets A1 and A2 dated January 28, 2020 prepared for DiGiorgio Residence, 86 Oak Avenue, Falmouth, Ma – as drawn by Designs by SPB, Pocasset, Ma – plans are not stamped or signed; and
 - 'Plan of Existing Conditions' sheet 1 of 1 dated December 6, 2019, 'Plan of Proposed Addition' sheet 1 of 1, dated January 28, 2020, prepared for Henry and Anne DiGiorgio, Lot 162 & 163, 86 Oak Street in Falmouth – as drawn by Holmes and McGrath, Inc., 205 Worcester Court, Suite A4, Falmouth, Ma – plans are stamped and signed by Michael B. McGrath, PLS
2. The 12-foot by 15-foot single story den addition to the northerly side of the dwelling shall be sited 11 feet from the north (rear) lot line, and 12 feet from the easterly side lot line.
3. The Premises shall remain a three-bedroom dwelling.
4. The Applicant shall provide an As-built plan to the Zoning Board of Appeals at the completion of construction; lot coverage by structures not to exceed 25%.

5. The Applicant shall comply with engineering comments to provide a drywell for new roof runoff, and insure that stormwater is managed within the Premises, and does not cause any runoff.

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 24 2020 PM 1:58
TOWN CLERK

Date Filed With Town Clerk