

Zoning Board of Appeals Decisions Decisions for: 12-04-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 85-14

APPLICANT: MICHAEL A. SPALL & EILEEN L. SPALL
of Falmouth, MA

OWNER: David L. Gilpataric, Trustee of Ransom Trust

DEED/CERTIFICATE: Certificate No. 177678 – Lot 13, Plan 4794-G (Sheet 2)

SUBJECT PROPERTY: 84 Ransom Road, Falmouth, Massachusetts
Map 48, Section 11, Parcel 019, Lot 013

Under a date of October 3, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze a pre-existing nonconforming one-story, three-bedroom single-family dwelling and construct a two-story, three-bedroom single-family dwelling on subject property located at 84 Ransom Road, Falmouth, Massachusetts.

A public hearing was opened on December 4, 2014. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman David Haddad, Clerk Kimberly Bielan, Member Terrence Hurrie and Associate Mark Cool

Note: Vice Chairman Kenneth Foreman recused himself from the hearing process.

Clerk Bielan read the Notice of Public Hearing into the record.

Kevin P. Klauer II an attorney with Ament Law Firm was present on behalf of the applicants and explained that the applicants are purchasing the subject property that consists of 13,600 square feet [13,200 of which is upland] of Residential B zoned land that is within the Oyster Pond Coastal Pond Overlay District. The existing nonconformity is that the structure is located 35' from the 3' contour line off Oyster Pond, which requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The existing dwelling that will be razed down to foundation is a three-bedroom ranch; and the proposed dwelling will be a two-story, three-bedroom dwelling using the existing foundation. The plans submitted to the file show that a bedroom used in the basement will be removed and relocated to the second floor where there will be two bedrooms; the master bedroom will be on the first floor. The plans show a family room, mechanical room, storage room and garage space in the proposed basement – no bedrooms. The bedroom count will remain three [as existing]. The proposed second floor addition will increase the height of the dwelling from 19' to 27'6". The proposed dwelling will have no impact on any view or vista; there will be no adverse effect, no impact on traffic flow and will not be more detrimental than the existing dwelling. Across the street from the dwelling is conservation land. Lot coverage by structures will be 12.3% and total lot coverage will be 20.4% - well below the maximum allowed under Section 240-69 A. of the Code of Falmouth.

Attorney Klauer informed the Board that the applicant has been to the Conservation Commission and received approval on November 12, 2014; and he submitted to the file, a copy of the Title 5 Inspection for the septic system. He reviewed the neighborhood relative to the proposed height increase of the dwelling and that the proposed does not negatively impact the neighborhood or any view or vista. Attorney Klauer stated that the proposed dwelling will not be any more detrimental than what is existing and asked for the Board's approval.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Engineering Department had standard comments with the addition that they recommend that the applicant trim the bushes along Ransom Road to improve sight distance around the corner.

A referral submitted by the Board of Health Agent David Carignan states: The existing basement bedroom doesn't appear to meet the requirements for use as a bedroom under Article II of the State Sanitary Code – 8% of the floor area of the room must be represented as glazed window area. The room only has one window. This room may not be a legitimate bedroom. If the applicant cannot demonstrate that it is, then the septic plan would have to show a reserve area because of the increase in bedrooms.

Referrals submitted from the Building Department and the Planning Department had no comment.

Clerk Bielan noted a letter from Christine and Mary Jo Gault and Peter Valtin of 90 Ransom Road submitted to the file in support of the proposed project.

Documents submitted to the file: 1) E-mail from Conservation Commission Department informing the Board of Appeals that the Commission approved an application for 84 Ransom Road on November 12, 2014; 2) a copy of a Board of Health Variance from 2002 for subject property; and 3) copy of the Title 5 Official Inspection Form dated June off 2014.

Board Questions:

Member Cool asked if applicant was amenable to trim the bushes at the corner of property as recommended by the Engineering Department and if Board of Health had any concerns.

Attorney Klauer stated he is unaware of that but the applicant would have no issue with trimming the bushes as recommended.

Thomas Bunker, RLS stated that the Board of Health wants the plan to show a reserve area; the bedroom count remains the same and there will not be a bedroom in the basement [basis of BOH referral]. The plan does reflect a reserve area.

Member Cool so the bedroom count will remain at three and the reserve area meets the standards.

Mr. Bunker stated yes and explained. Attorney Klauer said there is a septic inspection that passed and will submit it to the file.

Member Bielan asked if the nonconforming setback of 35' to the 3' contour line would remain the same.

Attorney Klauer stated yes.

Chairman Haddad asked if the change to the plan was for reserve area only.

Attorney Klauer stated yes with the addition shown of the bay window and 2nd floor balcony.

Chairman Haddad asked if the old foundation will be used, if there will be bedrooms in the basement and if stormwater will be maintained on site.

Attorney Klauer said that the existing foundation will be used and a structural engineer has signed off on the plan; and that there will not be any bedrooms in the basement.

Thomas Bunker stated there is no increase in use to the site – existing dry wells will be sufficient and will be maintained; roof runoff will be through downspouts to existing wells.

Chairman Haddad asked if there will be any grade changes through this plan.

Mr. Bunker said there is a minor grade change at the left hand side of the garage to accommodate an entrance door and steps.

Chairman Haddad asked how much that will be – what are we talking.

Mr. Bunker stated it will be 3' x 2' and 2' high approximately 120 cubic feet.

Chairman Haddad said this is in the Oyster Pond Coastal Pond Overlay – he asked Mr. Bunker if it satisfies Section 240-99 nitrogen loads in this area and read from the section: "The reviewing Board shall make all findings regarding the analysis and may withhold approval if the proposal does not comply with the standards of this Article.". He then addressed Attorney Klauer and asked him about a variance issued in 2001 on the property requiring the pumping of the septic every other year, garbage grinder, flow restrictors on plumbing and that there be no additional bedrooms to the property; no modifications to this house, etc.. He asked Mr. Bunker to discuss this and asked if we [town] are still protected.

Mr. Bunker stated that it is a Board of Health variance that is ongoing with the property and requires low flow shower heads and toilets; there is no increase in bedrooms so no new nitrogen loading – no increase or decrease of nitrogen on subject property.

Chairman Haddad asked Mr. Bunker if he believes that there is no need for denitrification system.

Mr. Bunker stated there is no change on the property and the Board of Health and Conservation Commission did not require a denite or IA system.

Chairman Haddad said as he reads Section 240-99, it is not the Board of Health, it is this reviewing Board.

Attorney Klauer said he understands but that the application was made under Section 240-3 C. and not subject to Section 240-99.

Chairman Haddad stated however this property is in the Oyster Pond Overlay.

Attorney Klauer stated he understands.

Chairman Haddad said if he is reading this [section 240-99] correctly, Oyster Pond is in a stabilization area and asked Mr. Bunker if he was familiar with the bylaw.

Attorney Klauer asked the chairman if you look at Section A of 240-99 it says it is for all development under 240-98 and for the purposes of this article it is for subdivisions of five lots or greater than five acres, commercial development and special permit uses filed in accordance with Article XXXII; so 240-99 is not applicable to this application.

Chairman Haddad said it may not pertain and this is one of those bylaws the Town needs to clean up.

Chairman Haddad asked Mr. Bunker if he is satisfied that the septic existing will not increase nitrogen.

Mr. Bunker stated there is no change; the property will remain as a three bedroom so no change in nitrogen.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Wendy Bissler, Executive Director of Oyster Pond Trust is in support of the proposed project; this will be a nice improvement to the neighborhood. She said that she is in favor of alternate septic systems being installed to control nitrate loading into the pond.

Attorney Klauer stated that the system existing on site has passed inspection and the bedroom count is not being increased; cost of an alternate system would be substantial cost to the applicant.

Member Cool made a motion to close the hearing. Member Bielan seconded the motion. Motion carried 4 - 0.

Chairman Haddad closed the Hearing.

Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing,

makes the following findings:

The subject property located at 84 Ransom Road in Falmouth contains 13,600 square feet of Residential B zoned land that is located in the Oyster Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze to the foundation, the pre-existing nonconforming three-bedroom ranch style single-family dwelling and construct on existing foundation a two-story three-bedroom single-family dwelling. The existing basement will be used with the removal of the bedroom that will be relocated to second floor. The dwelling will remain as a three-bedroom; the nonconforming setback to the 3' contour line off Oyster Pond will remain the same and shall not be increased. The setbacks of the dwelling shall be in compliance with Section 240-68 A. and B. of the Code of Falmouth; and the lot coverage will remain well below the maximum allowed in a residential zone pursuant to Section 240-69 A. of the Code of Falmouth.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that there is no increase in the existing nonconforming setback to the 3' contour line off Oyster Pond and there will be no new nonconformities created through this approval. Furthermore, the Board finds that the proposed dwelling will maintain the bedroom count as existing at three.

The Board finds through testimony of the applicant's representative that the applicant will be amenable to trim and maintain the bushes at the corner of the lot for sight distance purposes as recommended by the Engineering Department (see referral in file).

The Board finds through testimony of the applicant's representative and from plans submitted, there will be three bedrooms; two located on the second floor and a master bedroom on the first floor – there shall be no bedrooms in the basement. The Board further finds that the applicant understands that there shall be no bedrooms or sleeping accommodations created in any basement area on subject property. Furthermore, the Board finds that the sitting room/computer room on the second floor will remain open to the hall and not be enclosed.

The Board finds that there are existing drywells on the subject property and the proposed dwelling will have downspouts to drywells and that said drywells will be maintained so as to keep stormwater on-site.

The Board finds through testimony of the applicant's representative that there will be no bedrooms or sleeping accommodations created within the basement area.

The Board finds through information submitted to the file from the Conservation Commission that the project has been approved and the decision will be drafted.

In addition to the above findings, the Board finds that the proposed will be in harmony with the general purpose and intent of this chapter and does include consideration 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 dwelling as there will be no increase to the existing nonconforming setback and no new nonconformities created; the lot coverage will be in compliance with the Town Code.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and signed off as a three bedroom system by the Board of Health; there is adequate reserve area for upgrade shown on the plan, if necessary.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling reconstruction discussed and represented herein will have no effect on the

supply of affordable housing in Falmouth.

H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.

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

Member Bielan made a motion to Grant the Special Permit with conditions. Member Cool seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to Grant the Special Permit to Michael and Eileen Spall (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze the pre-existing three-bedroom ranch dwelling and construct a two-story three-bedroom single-family dwelling on existing foundation on subject property located at 84 Ransom Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing dwelling, construction of the proposed dwelling, all setbacks, lot coverage, septic system, and use of basement and dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Additions" prepared for Michael and Eileen Spall 84 Ransom Road, Falmouth, MA, dated September 30, 2014 with a final revision date of 12/1/2014, drawn by BSS Design, Inc. with a Board date 'received' stamp of 12/2/2014;

- Existing and Proposed hand drawn/computer floor plans as:

o Drawing A 'First Floor Existing' dated 9/10/14 with a Board date 'received' stamp of Oct. 3, 2014;

o Drawing B 'Basement Existing' dated 9/10/14 with a Board date 'received' stamp of Oct. 3, 2014;

o Drawing C 'New Basement' dated 9/15/14 with a final revised date of 12/1/14 and a Board date 'received' stamp of Dec. 2, 2014;

o Drawing D 'New First Floor' dated 9/10/14 with a final revision date of 11/22/14 and with a Board date 'received' stamp of Dec. 2, 2014; and

o Drawing E 'New Second Floor B. dated 9/10/14 with a final revision date of 11/22/14 and a Board date 'received' stamp of Dec. 2, 2014.

- Proposed hand drawn/computer Elevation plans:

o Drawing A 'Front Elevation' dated 10/18/14 with a final revision date of 11/22/14 and a Board date 'received' stamp of Dec. 2, 2014;

o Drawing B 'Back Yard Elevation' dated 9/18/14 with a final revision date of 11/22/14 and with a Board date 'received' stamp of Dec. 2, 2014;

o Drawing C 'Side Elevation' dated 10/23/14 with a final revision date of 12/1/14 and a Board date 'received' stamp of Dec. 2, 2014;

o Drawing D 'Side Elevation' dated 11/16/2014 with a final revision date of 12/1/14 with a Board date 'received' stamp of Dec. 2, 2014; and

o Drawing H 'Framing Section' dated 11/16/14 with a final revision date of 12/1/14 and a Board date 'received' stamp of Dec. 2, 2014.

2. The project engineer [BSS Design, Inc.] shall submit a corrected copy of the "Plot Plan – Proposed Additions" showing accurate land mass totals [should be 13,200 upland square feet and total land 13,600 square feet]. Title box should eliminate 'proposed additions' as this is a razing to foundation and reconstruction.

3. There shall be no more than three (3) bedrooms on subject property.

4. There shall be no bedrooms or sleeping accommodations created within any basement area of the proposed structure.

5. The Board herein adopts the conditions set forth in the Conservation Commission's "Orders of Conditions" for subject project on subject property.

6. The applicant shall maintain the dry wells to insure that stormwater runoff is contained on site.

7. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, 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, 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.)

9. This permit shall lapse two 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 Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 85-14

Applicant: MICHAEL A. SPALL & EILEEN L. SPALL
of Falmouth, MA

Subject Property: 84 Ransom Road, Falmouth, Massachusetts
Map 48, Section 11, Parcel 019, Lot 013

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

David Haddad, Board Chairman

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP #85-14 Spall - 84 Ransom Rd / R&R / posted 12/16/14 mm