

Zoning Board of Appeals Decisions Decisions for: 09-25-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 67-14

APPLICANT/OWNER: PAUL A. LAFFERTY & MARGO A. LAFFERTY of Enfield, CT

DEED/CERTIFICATE: Certificate 200789 – Lot 167, Plan 11210-W
Book 27506 / Page 146

SUBJECT PROPERTY: 50 Waquoit Landing Road, Waquoit, Massachusetts
Map 32, Section 22, Parcel 002, Lot 000

Under a date of August 8, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raze a pre-existing nonconforming, one-story, three-bedroom single-family dwelling and reconstruct a two-story four-bedroom single-family dwelling on subject property located 50 Waquoit Landing Road, Waquoit, Massachusetts.

A public hearing was held on September 25, 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, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara and Associate Mark Cool

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

Michael Borselli, P.E. with Falmouth Engineering, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed reconstruction of a single-family dwelling on subject property. Mr. Borselli explained the existing three-bedroom, one-story dwelling on subject property has a nonconforming setback of 23' to the 3' contour line of the waters of Waquoit Bay; all other setbacks are in compliance. He noted that the plan shows two lots [Lot 167 with 2,390 square feet of land and Parcel 2 with 20,240 square feet of land]; Lot 167 is land courted and the other lot is registered; both properties are deeded to the applicants (see Book 27506, page 146 BCRD). Mr. Borselli explained the razing of the existing dwelling and the construction of a new two-story, four-bedroom single-family dwelling that will have an improved setback of 31' to the 3 foot contour line off the waters of Waquoit Bay. The new dwelling will have a two car garage, a work shop, a storage area, two floors of living space and a basement with a bay door for access to basement for storage. There is a screened porch on the first level off the great room – the screened porch will not be heated. The garage and work shop will not have plumbing or heating; the storage space next to workshop will be heated. There is no heat proposed in the basement area. The existing cesspools will be eliminated and a four-bedroom capacity Title V Septic System will be installed. Mr. Borselli spoke to the referral submitted by the engineering department and informed the Board that the driveway will be revised so that is perpendicular to the lot line rather than at an angle as it is, and it will be 5' from the side lot line as recommended by the engineering department.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Engineering Department states: If the proposed driveway is a different material than the existing driveway, a driveway permit will be required. For the design of the driveway we recommend that the driveway be perpendicular to the lot line rather than at its current angle and at least 5' from the lot line. This will better the sight distance and the homeowner won't have to dive over the berm created for the catch basin. Any trees in the right of way that need to be cut down must be approved by the Town Tree Warden.

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

There was correspondence in the file from the Board of Health Agent David Carignan regarding the

calculation of bedrooms on subject property and that the Board of Health will require window area and finished room area calculations before signing off on building permit for the project.

The Board questioned Mr. Borselli regarding the use of the spaces marked 'unheated work shop', 'storage' and 'great room' in the basement area.

Mr. Borselli explained that the work shop will not be heated, the basement will not be heated, the screened porch will not have heat, the garage space will not be heated and the storage area will be heated.

The Board asked Mr. Borselli about improving the setback to the 3' contour line.

Mr. Borselli explained that they have improved the setback from 23' to 31', but to move the house back any further would eliminate the owner's view as the only view they have is straight out from dwelling. There is no view on either side sight-line as there is vegetation that will remain as well as other trees required to be planted through Conservation Commission's approval.

The Board questioned Mr. Borselli on driveway revisions and there being two lots.

Mr. Borselli explained the revising of the driveway so that it will come straight off Waquoit Landing Road and not at an angle; and locate it so it is at least 5' off the side yard property line. He then stated that this is two lots but that the Assessors' records consider them merged – we consider it one lot.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member Foreman made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 – 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 50 Waquoit Landing Road contains 22,630 square feet of Residential A zoned land that is located in the Head of Waquoit Bay Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze a pre-existing nonconforming one-story, three-bedroom single-family dwelling and construct a less nonconforming two-story, four-bedroom single-family dwelling with a two-car attached garage and a basement. The plan prepared for the applicant's show that there are two lots – one being at the front along Waquoit Landing Road that is 2,390 square feet and a parcel from there to the water that has 20,240 square feet of land. The smaller lot is land courted and the larger lot is registered. The Town's Assessors' records show these two lots to be merged and one tax bill is generated for 50 Waquoit Landing Road.

The Board finds the proposed construction of a new dwelling to have a less nonconforming setback to the 3' contour line off the waters of Waquoit Bay. All other setbacks are in compliance with Section 240-68 A. and B. of the Code of Falmouth. Lot coverage by structures and structures, parking and paving are in compliance with Section 240-69 A. of the Code of Falmouth. The height of the proposed dwelling will be in compliance with Section 240-70 of the Code of Falmouth.

The Board finds that the cesspools on the subject property will be eliminated and a new four-bedroom capacity Title V septic system will be installed. The applicant will revise the driveway plan as recommended by the Town Engineering department.

Section 240-3 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 razing of the existing dwelling and construction of a new dwelling will

not be substantially more detrimental than what currently exists. The Board further finds that the only nonconformity on the property is the setback to the 3' contour line of the waters of the Head of Waquoit Bay, which will be improved by 8' through the proposed construction of the new dwelling. Furthermore, the Board finds that all other dimensional requirements relative to setbacks [Section 240-68 A. and B.] and lot coverage [Section 240-69 A.] will be in compliance.

The Board finds that the existing dwelling is a three-bedroom house and the proposed will be a four-bedroom house with the elimination of cesspools and the installation of a Title V septic system. The Board further finds through the applicant's testimony that there is no intent to create any sleeping accommodations or bedrooms in the basement or storage areas shown on the plans reviewed and discussed herein. Furthermore, the Board finds through testimony of the applicant that the basement 'great room', screened porch, garage and workshop will not be heated.

The Board finds that there will be no habitable space created in the attached garage and its attic space.

The Board finds that the "Plot Plan" for the proposed dwelling construction shows dry wells that will contain roof runoff on site.

The Board finds that, although the Assessors' records indicate this is one lot, the testimony by the applicant's representative is that this is two lots [one registered and one recorded land] as shown on the plans reviewed and discussed herein. The Board further finds that the applicant has agreed to merge the lots.

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 new dwelling structure as the one nonconforming setback was improved and all other dimensional requirements will be in compliance with the Town bylaws.
- 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 due to the increase from three bedrooms to four bedrooms on the property; and the revised driveway plans will be an enhancement in accessing the property.
- 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; 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 four bedroom system by the Board of Health. The Board verified through the applicant that there will be no garbage disposal within the structure.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system as there was no referral submitted to the file from the Water Department.
- G. The proposed dwelling construction 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 Foreman 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 5 - 0 to Grant the Special Permit to Paul A. and Margo A. Lafferty (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze the existing one-story three-bedroom single-family dwelling and construct a two-story, four-bedroom single-family dwelling with attached garage, screened porch and basement on subject property located at 50 Waquoit Landing Road, Waquoit, Massachusetts. This special permit is subject to the

following conditions:

1. The razing of the existing dwelling, construction of new dwelling, driveway improvement, septic system, all setbacks, height of structure, lot coverage and use of dwelling structure and garage shall be as represented herein to the Board and as shown on plans submitted and reviewed by the Board entitled:
 - "Plot Plan – Existing Conditions" for 50 Waquoit Landing Road prepared for Paul Lafferty in Falmouth, MA – Sheet 1 of 3 drawn by Falmouth Engineering, Inc. dated December 3, 2013, revised on 7/24/14 and with a Board date 'received' stamp of August 8, 2014;
 - "Plot Plan" for 50 Waquoit Landing Road prepared for Paul Lafferty in Falmouth, MA – Sheet 2 of 3 drawn by Falmouth Engineering, Inc. dated December 3, 2013 with a final revision date of 8/7/2014 and with a Board date 'received' stamp of August 8, 2014;
 - "Septic System Details" for 50 Waquoit Landing Road prepared for Paul Lafferty in Falmouth, MA – Sheet 3 of 3 drawn by Falmouth Engineering, Inc. dated December 3, 2013 and with a Board date 'received' stamp of August 8, 2014; and
 - "Lafferty Residence 50 Waquoit Landing Road Falmouth, MA" architectural plans drawn by Giampietro Architects consisting elevations, floor plans and basement plan shown on Drawings A-1 through A-5 dated 7/24/2014 with A-1 and A-2 having revisions dates of 8/25/2014 and with a Board date 'received' stamp of August 26, 2014.
2. The "Plot Plan" – Sheet 2 of 3 noted in condition 1 above shall be revised with the driveway location and direction changed as stated in the hearing (moving 5' from the side property line and straight off Waquoit Landing Road – not at an angle]. The revised plan shall be submitted to the Board of Appeals prior to issuance of a building permit. The Zoning Administrator may administratively approve the revised plan.
3. There shall be no more than four (4) bedrooms on subject property.
4. There shall be no sleeping accommodations or bedrooms created within any of the storage spaces, basement or garage.
5. The garage shall be unheated.
6. The workshop shown on the plan noted in condition 1 above (adjacent to garage) shall remain unfinished and unheated.
7. The screened porch shown on Drawing A-3 of the plans noted in condition 1 above shall remain a screened porch with no windows installed and no heat.
8. The lots shown on the plan reviewed and discussed herein by the Board shall be merged.
9. 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.
10. The Applicant shall meet the requirements of the DPW Water Division.
11. 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.)
12. 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: 67-14

Applicant: PAUL A. LAFFERTY and MARGO A. LAFFERTY
of Enfield, CT

Subject Property: 50 Waquoit Landing Road, Waquoit, Massachusetts
Map 32, Section 22, Parcel 002, Lot 000

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

Vote: 5 – 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 #67-14 Lafferty - 50 Waquoit Landing Rd / R&R posted 10/6/14 mm