

Zoning Board of Appeals Decisions Decisions for: 07-17-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 43-14

APPLICANT/OWNER: PETER R. FENN TRUSTEE of WLJ NOMINEE TRUST
Jamaica Plain, MA

DEED/CERTIFICATE: Book 27398 / Page 130

SUBJECT PROPERTY: 43 Church Street, Woods Hole, MA
Map 51, Section 01, Parcel 005, Lot 004

Under a date of May 19, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-70 D. of the Code of Falmouth to raze and reconstruct the existing accessory boat house structure that will have a building height of 25' on a 3.36 acre parcel known as 43 Church Street, Woods Hole, Massachusetts.

A public hearing was held on July 17, 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 Matthew McNamara, Member Patricia Johnson and Associate Member Mark Cool

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

Attorney Laura Moynihan was present on behalf of the applicant and introduced Raul Lizardi-Rivera with Holmes and McGrath, Inc. to review the existing site conditions and proposed reconstruction of the existing boat house on subject property.

Raul Lizardi-Rivera of Holmes and McGrath, Inc. explained that subject property is a 3.36 acre parcel with a main dwelling (to be reconstructed), a guest house, boat house and changing room. The boat house is located in a velocity zone and they need to comply with new flood regulations. The boat house requires a special permit as it is proposed with a 25' height from the street side – it is currently 18' in height. He said the boat house will be on a Ruck septic system that is shared with two lots to the north as well as the existing guest house and main house on subject property. The boat house will not be any closer to Little Harbor than what is existing.

Clerk Bielan read the Town Department referrals into the record.

A referral from the Board of Health Agent states: No issues with project. Huge existing septic system has plenty of capacity.

A referral from the Historic District states: Outside of historic district.

A referral submitted by the Engineering Department has standard comments regarding right of ways, driveway alteration and storm water runoff.

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

Board Questions:

Member Cool asked Attorney Moynihan if the applicant understands that pursuant to Section 240-70 D. of the Code of Falmouth, the subject property cannot be subdivided below two acres and there may not be an accessory apartment on the property.

Mr. Lizardi-Rivera stated that it is correct.

Member Bielan asked if the recreation room on second level of boat house is a bedroom.

Mr. Lizardi-Rivera said there is no sleeping accommodations proposed but it does meet the criteria of a bedroom.

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

There was no public comment.

Member McNamara 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 43 Church Street in Woods Hole contains 3.36 acres of Residential AA zoned land that is partially located within the Historic District Overlay. The subject property is nonconforming as there are two dwellings located on the property. According to Section 240-60 D. of the Code of Falmouth, the proposed reconstructed boathouse is not subject to a minimum setback to the waters of Little Harbor. The applicant applied under Section(s) 240-70 D. of the Code of Falmouth to allow the existing 18.5' tall boat house to be razed and reconstructed with a height of 25'. Under said section an accessory structure on lots of two acres or more may have a height of 25' by special permit with the Zoning Board of Appeals requiring that the lot shall not be divided below a two-acre minimum, that there are no accessory apartments allowed and that there is no visual impact to the character of the neighborhood or obstructive view or vista. [Note: Sub-section D. is an exception to Section 240-70 where accessory structures are held to an 18' height and 1 ½ stories standard.]

The Board finds that on this 3.36 acre parcel there is a main dwelling, a guest house, a boat house and a changing room. All structures share a Ruck septic system on site as well as the two parcels to the north of subject property.

Section 240-70 of the Code of Falmouth – "Maximum building height." Sub-section D. States: By special permit from the Zoning Board of Appeals, on lots two acres or more, accessory structures may have a maximum height of 25 feet. In granting such special permit, the Zoning Board of Appeals shall require that the lot shall not be divided below the two-acre minimum, that no accessory apartment shall be allowed and that the suitability of the site is sufficient to allow such an increase in height so that there will not be any adverse impact on neighborhood visual character or obstructions of views and vistas.

The Board finds that the proposed raze and reconstruction of the existing boat house on subject property with a proposed height of 25' meets the criteria of Section 240-70 D. in that the applicant's representative stated that the parcel would not be subdivided below two-acres, that there is no intent for an accessory apartment within the boat house and the proposed 25' tall boat house does not impact a neighborhood view or vista as it is located on the water and far away from a road or abutter.

The Board finds that the razing and reconstruction of the boat house on subject property will be an improvement and in keeping with the use of the property as it has existed for many years.

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 reconstruction of the existing boat house on site as there are no dimensional nonconformities on site and the proposed does not create any new nonconformities.

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 unchanged 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 a Ruck system on site and is shared by the structures on subject property as well as two properties to the north of subject property.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site

G. The proposed boat house 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 McNamara 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 Peter R. Fenn, Trustee (herein referred to as Applicant) under Section(s) 240-70 D. of the Code of Falmouth to raze and reconstruct the existing boat house on subject property located at 43 Church Street, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the boat house, all setbacks, elevation of boat house and use of boat house shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan of Proposed Main & Boat House Reconstruction" prepared for WLJ Nominee Trust for #43 Church Street in Woods Hole, MA – Sheet 1 of 2 dated May 7, 2014 as drawn by Holmes and McGrath, Inc. with a Board date 'received' stamp of May 19, 2014;
- "Site Plan Proposed Boat House Reconstruction" prepared for WLJ Nominee Trust for #43 Church Street in Woods Hole, MA – Sheet 2 of 2 dated May 7, 2014 as drawn by Holmes and McGrath, Inc. with a Board date 'received' stamp of May 19, 2014; and
- Architectural plans consisting of three pages dated 3-3-14 drawn by Spring Hill Design – 'Plans' showing first and second level floor plans, 'Elevations' showing East and West elevations and 'Sections/Elevation' plan – all three pages had a Board date 'received' stamp of May 19, 2014.

2. The boat house discussed herein shall remain accessory to the primary dwelling on subject property and there shall be no cooking facilities whatsoever allowed in this approved boat house, which shall include, but not be limited to, an oven, a stove, a microwave oven, a hot plate or a toaster oven.

3. The subject property shall not be subdivided without modification of this Special Permit before the Board of Appeals. A requirement of Section 240-70 D., basis of the request herein, is that there shall be no subdivision below the two acre requirement to allow the height of 25' for an accessory structure.

4. The applicant shall submit a draft of a Restrictive Covenant for Board's review and approval and signature and then filing with the Registry of Deeds by the Applicant or their representative with a copy of said filed document submitted to the Board of Appeals. The approved and filed document shall be submitted to the Board of Appeals after construction commences and prior to final approval by the Building Department and the Board of Appeals. The Restrictive Covenant shall include language that includes: The accessory structure on subject property represented and approved in Special Permit #43-14 as 'boat house' shall always be accessory to the main dwelling on subject property and shall not become a separate dwelling; there shall not be any cooking facilities allowed within the boat house; and the boat house structure shall not be rented separate from the main dwelling on subject property known as 43 Church Street.

5. 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.

6. 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.)

7. 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: 43-14

Applicant: PETER R. FENN, TRUSTEE OF WLJ NOMINEE TRUST
of Jamaica Plain, MA

Subject Property: 43 Church Street, Woods Hole, Massachusetts
Map 51, Section 01, Parcel 005, Lot 004

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 #43-14 Fenn / 43 Church St, Woods Hole / R&R boat house posted to web 7/29/14 mm