

Zoning Board of Appeals Decisions Decisions for: 05-15-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 29-14

APPLICANT/OWNER: JAMES J. FEENAN, JR. and PATRICIA C. FEENAN
of Windham, NH

DEED/CERTIFICATE: Certificate 165294 – Lots 94 & 95, Plan 4286A – Plate 9

SUBJECT PROPERTY: 60 Cypress Street, Teaticket, MA
Map 39A, Section 11, Parcel 000, Lot 094

Under a date of March 14, 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 reconstruct the northeast portion of the pre-existing nonconforming single-family dwelling on subject property located at 60 Cypress Street, Teaticket, Massachusetts.

A public hearing was held on May 15, 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, Acting Clerk Matthew McNamara, Associate Kimberly Bielan and Associate Mark Cool

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

Michael McGrath, P.L.S. with Holmes and McGrath, Inc. was present on behalf of the applicant and reviewed the existing site and the proposed removal and reconstruction of the northeast section of the existing dwelling on subject property. Mr. McGrath reviewed the nonconforming front, rear and side yard setbacks and explained that the northeast portion of the single-story dwelling will be removed and a two-story addition will be constructed within the same footprint. He stated that the existing dwelling has a crawl space and the proposed reconstructed portion will have a basement. He said the existing lot coverage is non-compliant by structures at 28.8% and the proposed will be the same at 28.8%; there will be no increase to the existing nonconforming setbacks; and the dwelling will remain a three-bedroom dwelling with no increase in bedrooms through the proposed. He explained that the plans show two bedrooms and that the third bedroom is the office as it meets the criteria of a bedroom. Mr. McGrath reviewed Section 240-216 of the Code of Falmouth relating to the proposed and asked the Board to grant the Special Permit.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Engineering Department has standard comments and notes that the project must not direct any stormwater runoff to public property, abutters or right of ways.

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

Clerk McNamara noted that there was no correspondence submitted from any abutter or interested party.

Board questioned Mr. McGrath about basement use, stormwater runoff and accessory structures.

Mr. McGrath told the Board that the basement proposed is for storage as there is only crawl space under dwelling; that the new roof area will have down spouts and if necessary, drywells; and that there is no intention to add any accessory structures to the lot.

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

Member Cool made a motion to close the hearing. Member McNamara 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 60 Cypress Street contains 4,800 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the northeast portion of the single-story, three-bedroom, pre-existing nonconforming single-family dwelling and reconstruct a two-story addition within the same footprint with a basement. The applicant is reconfiguring floor space to create a new master bedroom and bathroom on the second level of the proposed reconstruction and to remove the wall between the existing two bedrooms on the first floor to create a large bedroom. The family room will be the same as before reconstruction and will still meet the criteria of a bedroom; thus the dwelling will maintain a three-bedroom status. A deck will be added to the rear of the proposed reconstruction and will be in the same footprint as the deck that was previously there before reconstruction. The existing dwelling is nonconforming due to setbacks: a front yard setback of 15.7' [as shown on Sheet 2 of 2 "Existing Conditions" plan dated Feb 26, 2014 revised on 5/15/2014] that is required to be 25' pursuant to Section 240-68 A. of the Code of Falmouth; an easterly side yard setback of 4.4' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and a rear yard setback [from the deck] of 9.1' that also requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 28.8% which not only exceeds the 20% by right maximum pursuant to Section 240-69 A. of the Code of Falmouth, but also exceeds the 25% maximum lot coverage by structures through a special permit pursuant to Section 240-69 E. of the Code of Falmouth. The nonconforming setbacks and the nonconforming lot coverage by structures will remain as existing according to the plans submitted, reviewed by the Board and noted herein.

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 northeast portion of the pre-existing nonconforming single-family dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the reconstruction will not increase any existing nonconformity on the property. Furthermore, the Board finds that the proposed reconstruction of the existing dwelling is an enhancement of the utilization of the dwelling by its residents.

The Board finds that the reconstructed portion of the dwelling will have a basement that will be used for storage; and although the applicant's representative states that there is an existing crawl space under the portion of the dwelling not to be reconstructed – records and existing drawings [computer generated] submitted to the file show that there is a 720 square foot basement with oil tank, electrical panel and boiler in said basement that is accessed by a bulk head. The Board finds that the proposed reconstruction of the northeast portion of the existing dwelling will remain a part of the existing dwelling and not be created into a separate living area. Furthermore, the Board finds that the subject property and the single-family dwelling discussed herein is located in a residential district where only one dwelling is allowed per lot [Section 20-19 of the Code of Falmouth]; and that subject property does not meet the criteria to allow a conversion of a dwelling into more than one dwelling unit [Section 240-23 B. of the Code of Falmouth] or an accessory apartment [Section 240-23 I. of the Code of Falmouth].

The Board finds that the applicant's representative gave testimony that all stormwater runoff will be maintained on site and that roof gutters on reconstructed portion of dwelling will have downspouts into drywells. The Board further finds that the applicant's representative gave testimony that there are no accessory structures proposed on site.

In addition to the above findings, the Board finds that the proposed reconstruction of the northeast portion of the single-family dwelling on subject property 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 plan to reconstruct a portion of the existing dwelling within the exact same existing footprint and maintain the single-family dwelling status as represented herein; and to maintain all nonconforming setbacks and lot coverage as shown on the "Existing Conditions" and "Proposed House Reconstruction" plans noted herein
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a single-family dwelling 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 basically be unchanged 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 similarly; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is a cesspool as recognized by the Board of Health and the dwelling is a three bedroom dwelling.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed reconstruction of a portion of the existing dwelling 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 Cool made a motion to Grant the Special Permit with conditions. Member McNamara 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 James and Patricia Feenan (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to reconstruct a portion of the pre-existing nonconforming single-family dwelling on subject property known as 60 Cypress Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The reconstruction of the northeast portion of the existing single-family dwelling, all setbacks, lot coverage, height of proposed and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Proposed House Reconstruction Plot Plan" prepared for James and Patricia Feenan for Lots 94 & 95, #60 Cypress Street in Falmouth, MA, Sheet 1 of 2 dated February 26, 2014 and drawn by Holmes and McGrath, Inc. with a Board date 'received' stamp of March 14, 2014;
- "Existing Conditions Plot Plan" prepared for James and Patricia Feenan for Lots 94 & 95, #60 Cypress Street in Falmouth, MA, Sheet 2 of 2 dated February 26, 2014 with a revised date of 5/15/2014 and drawn by Holmes and McGrath, Inc. with a Board date 'received' stamp of May 15, 2014;
- Computer generated "Existing First Floor Plan", "Existing Basement ", "Demolition Plan" and "First Floor Plan" no creation date on plans – all with a Board date 'received' stamp of April 3, 2014; and
- "Proposed Addition & Alterations for James and Tricia Feenan 60 Cypress Street Falmouth, Massachusetts" architectural plans drawn by David J. Krom, Architect, Drawings A-1 and A-2 dated 2/21/14 showing proposed floor plan and elevation plan – both with a Board date 'received' stamp of March 14, 2014.

2. There shall be no more than three bedrooms allowed on subject property.

3. There shall be no accessory structures allowed on subject property without prior approval from the Board of Appeals through the application process.

4. The stormwater shall be contained on site through downspouts and drywells as testified to by the applicant's representative at the hearing.

- 5. There shall be no sleeping accommodations or bedrooms created in any of the basement area on subject property.
- 6. The applicant shall submit an 'as-built' plan post construction – showing all appurtenances attached to the dwelling which shall include all landings, steps, porches, decks and bulkheads. The as-built plan shall indicate all setbacks and lot coverage; and the plan shall be submitted to the Board of Appeals for review and approval prior to the final sign off by the Building Department and the Board of Appeals.
- 7. The single-family dwelling as represented through this special permit shall be maintained as a single-family dwelling and may not have two dwelling units within the structure approved herein.
- 8. 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.
- 9. The Applicant shall meet the requirements of the DPW Water Division.
- 10. 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.)
- 11. 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: 29-14

Applicant: James J. Feenan, Jr. & Patricia C. Feenan
of Windham, NH

Subject Property: 60 Cypress Street, Teaticket, Massachusetts
Map 39A, Section 11, Parcel 000, Lot 094

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 39-14 Feenan / 60 Cypress St / Recon portion of dwelling posted to web 5/22/14 mm