

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 33-14

APPLICANT: KEVIN MAHONEY and CELESTE MAHONEY
of North Andover, MA

OWNER: Jeffrey McCarthy and John F. McCarthy of Westwood, MA

DEED/CERTIFICATE: Book 1048 / Page 115

SUBJECT PROPERTY: 10 Hawthorne Avenue, Falmouth, Massachusetts
Map 46B, Section 26, Parcel 001, Lot 010

Under a date of April 3, 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 the existing single-story dwelling and construct a two and one-half story single-family dwelling on property known as 10 Hawthorne Avenue, Falmouth, 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 McNamara, Associate Kimberly Bielan and Associate Mark Cool

Clerk McNamara 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 razing of the pre-existing nonconforming one-story single-family dwelling and the construction of a two and one-half story single-family dwelling in similar footprint with slight improvements to the nonconforming setbacks and lot coverage. Mr. Borselli reviewed the nonconforming setbacks to the roadways of Hawthorne Avenue and Nantucket Avenue that are less than 5' and the setback from the northerly most property line (rear) of less than 10'; and the nonconforming lot coverage by structures of 27.4% on this 3,738 square foot corner lot. The existing one-story dwelling has two bedrooms and one bath; the proposed dwelling will have two bedrooms, 2 and one-half baths, an office that will maintain a 5' cased opening and an attic that will remain unfinished and used for storage. The existing dwelling has a basement and the proposed dwelling will have crawl space due to flood zone; the existing dwelling had a cesspool that failed and a new two-bedroom [220 gpd flow] Title V septic is proposed in the easterly side of the property; and the proposed roof will have gutters with drywells.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted by the Engineering Department had standard comments with the additional comments that the project must not direct stormwater runoff onto public property or right of ways; and that a driveway permit will be required for proposed driveway off Nantucket Avenue and that the first five feet of said driveway shall be asphalt or concrete.

A referral submitted by the Planning Department and the Water Department had no comments.

The Board of Health sent an e-mail on May 15, 2014 stating that they have no issues with the project.

Board Questions:

Member Bielan asked questions about the proposed office space as a bedroom and the attic space.

Mr. Borselli stated that the office space will not be used as a bedroom and that the attic has angled

ceilings and is not the size of the full floor space – it is a small area for storage.

Member McNamara asked if the grade was being changed, where storage will be created with the elimination of the basement and is there any accessory structures proposed or intended.

Mr. Borselli stated that the grade will not change. He stated that storage would be in the attic as there will be no basement and there are no plans for accessory structures.

Kevin Mahoney, applicant, stated that they may create storage under the back porch with lattice to buffer and that they will utilize the unfinished attic area for storage as well.

Chairman Haddad asked if there was any consideration to the slight turning of the proposed dwelling (approximately 90 degrees) making it more conforming and asked with the height of the proposed dwelling will be.

Mr. Borselli noted on the plan that if the dwelling were moved, the septic cannot be accommodated; and the height of the proposed dwelling will be 34.2'.

Chairman Haddad asked what the lot coverage will be.

Mr. Borselli stated that the lot coverage by structures will be slightly reduced from 27.4% to 27.1% and that total lot coverage will be 39.2% with paving but decreased to 36.1% with crushed stone drive.

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 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 10 Hawthorne Avenue contains 3,738 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze the pre-existing nonconforming two-bedroom single-story dwelling and construct a less nonconforming two-bedroom 2.5 story single-family dwelling in similar footprint as existing. The subject property has two front yards – Hawthorne Avenue and Nantucket Avenue – Hawthorne with a 2.0' setback to the property line and Nantucket Avenue with a 7' setback, both of which require a 25' setback according to Section 240-68 A. of the Code of Falmouth. Also nonconforming is the side or rear setback (northerly property line) of 1.5' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and lot coverage by structures of 27.4% where 20% coverage is the maximum in a residential district according to Section 240-69 A. and up to 25% by special permit according to Section 240-69 E. of the Code of Falmouth. The proposed plan shows the Hawthorne Avenue setback improved from 2.0' to 9.3', the Nantucket Avenue setback improved from 7' to 7.1', the northerly side or rear property line improved from 1.5' to 4.5' and lot coverage by structures slightly improved from 27.4% to 27.1%. The dwelling will remain as a two bedroom dwelling with a new Title V septic proposed. The height of the structure is proposed at 34.2', below the 35' maximum height under Section 240-70 of the Code of Falmouth.

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 one-story, two-bedroom single-family dwelling and the construction of a less nonconforming two-bedroom 2.5 story single-family dwelling will not be

substantially more detrimental than what currently exists.

The Board finds that the nonconforming setbacks and lot coverage have been slightly improved through the proposed plans reviewed herein. The Board further finds that the lot is 3,738 square feet in size and the applicant has maintained substantially the same footprint as existing dwelling and accommodated a new Title V septic system. Furthermore, the Board further finds that the proposed plans for the new dwelling are an enhancement of the utilization of a dwelling for the residents.

The Board finds that the proposed dwelling will remain a two-bedroom dwelling and that the room on the second floor noted on Drawing A3 as "Office" will have a five foot (5') cased opening and said Office will remain open to the hallway as represented and approved herein. The Board further finds that the attic space, also shown on Drawing A3, will remain unfinished and used for storage. The Board further finds that the applicant gave testimony that they may create additional storage under the back porch and add lattice as a screening. Furthermore, the Board finds through testimony of the applicant that there are no accessory structures proposed for subject property.

The Board finds that the dwelling is proposed so as to meet the new FEMA requirements. The Board further finds through testimony by the applicant's representative that there will be no increase to the grade of subject property.

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 single-family dwelling as the plans show that the nonconforming setbacks and lot coverage will be slightly lessened.
- 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 the location of the existing driveway on site will be slightly moved easterly and will require a permit from the Engineering Department.
- 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 are two-story dwellings and some 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 existing cesspool will be removed and a new Title V sewage disposal system will be installed and signed off by the Board of Health.
- 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 Cool made a motion to Grant the Special Permit with conditions. Member Bielan 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 Kevin and Celeste Mahoney (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze the pre-existing nonconforming one-story, two-bedroom single-family dwelling and construct a less nonconforming two-bedroom, 2.5 story single-family dwelling on subject property known as 10 Hawthorne Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of existing dwelling and the construction of a new two-bedroom, 2.5 story dwelling, all setbacks, height of structure, lot coverage and use of structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Existing Floor Plan for 10 Hawthorne Avenue" prepared for Kevin Mahoney in Falmouth, MA drawn by

Falmouth Engineering, Sheet 1 of 1 dated March 27, 2014 with a Board date 'received' stamp of April 3, 2014;

- "Custom Home Design Mahoney Residence 10 Hawthorne Ave. Falmouth, MA" architectural plans drawn by Architecture by SPB consisting of Drawing A1 'Proposed Front and Rear Elevation' dated 3/31/14, Drawing A2 'Proposed Left and Right Elevation' dated 3/31/14 and Drawing A3 'Proposed First, Second Floor Plan' and 'Proposed Attic Plan' dated 3/31/2014 – all with a Board date 'received' stamp of April 3, 2014;

- "Plot Plan – Existing Conditions for #10 Hawthorne Avenue" prepared for Kevin Mahoney in Falmouth, MA drawn by Falmouth Engineering, Inc. Sheet 1 of 3 dated March 31, 2014 with a Board date 'received' stamp of April 3, 2014;

- "Plot Plan for #10 Hawthorne Avenue" prepared for Kevin Mahoney in Falmouth, MA, Sheet 2 of 3 drawn by Falmouth Engineering, Inc. dated April 2, 2014 with a Board date 'received' stamp of April 3, 2014; and

- "Septic System Details for #10 Hawthorne Avenue" prepared for Kevin Mahoney in Falmouth, MA Sheet 3 of 3 drawn by Falmouth Engineering, Inc. dated April 2, 2014 with a Board date 'received' stamp of April 3, 2014.

2. There shall be no more than two (2) bedrooms allowed on subject property.

3. All stormwater shall be maintained on site. Applicant's representative gave testimony that there will be roof gutters and drywells installed.

4. There shall be no accessory structures located on subject property unless approved through modification of this Special Permit by the Board of Appeals.

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: 33-14

Applicant: Celeste Mahoney and Kevin Mahoney

Subject Property: 10 Hawthorne Avenue, Falmouth, Massachusetts
Map 46B, Section 26, Parcel 001, Lot 010

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 33-14 Mahoney / 10 Hawthorne Ave / raze & reconstruct posted to web 5/28/14 mm