

Zoning Board of Appeals Decisions Decisions for: 03-06-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 7-14

APPLICANT: NEAL DUNN, TRUSTEE of Stow, MA

OWNER: NEAL DUNN 2012 REVOCABLE TRUST

DEED/CERTIFICATE: Book 26833 / Page 251

SUBJECT PROPERTY: 25 Moses Road, North Falmouth, Massachusetts
Map 04A, Section 42, Parcel 000, Lot 088

Under a date of January 16, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3, 240-68 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling to be in compliance with velocity zone regulations on subject property known as 25 Moses Road, North, Falmouth, Massachusetts.

A public hearing was held on March 6, 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 Scott Zylinski, Member Patricia Johnson, Associate Kimberly Bielan and Associate Mark Cool

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

Attorney Kevin Klauer, II with Ament Law Firm was present on behalf of the applicant along with Michael Collins, Architect to review the proposed raze and reconstruction of the pre-existing nonconforming single-family dwelling, bringing said dwelling into velocity zone requirements. The subject property consist of 5,537 square feet of Residential C zoned land that is within the velocity zone and is abutting land to Buzzards Bay.

Architect Michael Collins explained that the applicant purchased the property in 2012 and had completed mild interior renovations and in June of 2013 a microburst caused significant damage and the repair costs would exceed amount allowed in the velocity zone so to meet requirements of the code they have to raze and reconstruct the dwelling. He stated that this is not the applicant's wish but it is code requirement. The proposed dwelling reconstruction is a little smaller than existing dwelling and will meet the code requirement. There is slight improvement to northerly side yard setback from 4.2' to 7'; the southerly side property line exists in compliance and will remain with a 10' setback; the rear property line will be improved from 19.1' to 22.4'. The front yard setback will remain conforming with a 43.9' setback. The lot coverage by structures will be minimally improved from 27.3% to 27.1% and total lot coverage will be greatly improved from 59% down to 43.9%. The current ridge height is approximately 30' and the proposed is 34.5' in height which is slightly below the maximum 35' height allowed by code. The increase in height is due to required construction in a velocity zone.

Mr. Collins said that the Conservation Commission approved the application on March 5, 2014 and they are awaiting the signed Order of Conditions. The subject property is on Town sewer and the bedroom count will not be increased.

Clerk Zylinski read the Town Department referrals into the record.

A referral submitted by the Engineering Department has standard comments with the addition of: The project, as proposed with the pavement replaced by shell, will result in a net reduction in stormwater from the site. The first 5 feet of the driveway from the roadway surface must be asphalt or concrete per Driveway Permit Application requirements.

A referral submitted by the Board of Health Agent David Carignan notes that the property is connected to Town sewer.

A referral submitted by the Water Superintendent MaryBeth Wisner states: Upgrade needed or applicant can sign a waiver.

A referral submitted by the Conservation Commission agent Mark Kasprzyk noted that the application is scheduled to be heard by ConComm on 1/29/14 under a 'Notice of Intent' hearing.

A referral submitted by the Building Department had no comment.

Clerk Zylinski noted that there are four (4) letters of support that were submitted to the file.

- Rob Perez of 89 Beach St., E. Falmouth, MA
- J. Timothy & Bonnie Noonan, previous owners of 25 Moses Road [subject property]
- Larry and Luzann Noonan of 23 Moses Road, No. Falmouth, MA
- Robert Bouchie of 136 Silver Beach Avenue, No. Falmouth, MA

Board Questions:

Member Johnson asked the number of bedrooms existing.

Mr. Collins stated four and four will remain through construction – no addition of bedrooms.

Member Zylinski asked if the rinse station on the southerly side of the proposed dwelling will contain runoff.

Mr. Collins stated yes.

Chairman Haddad asked if the grade will change through the proposed construction.

Mr. Collins stated yes and a certificate verifying change will be issued.

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 Zylinski 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 25 Moses Road in North Falmouth contains 5,537 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3, 240-68 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling located in a velocity zone. The reconstruction of the dwelling substantially in same footprint will meet velocity zone regulations and will slightly improve nonconforming setbacks. The total lot coverage by structures will improve slightly from 27.3% to 27.1%, while the total lot coverage for structures, parking and paving will be greatly reduced, although remaining nonconforming at 43.9%. The subject property is connected to Town sewer and the dwelling has four (4) bedrooms and will remain a four (4) bedroom dwelling through its reconstruction. The height of the proposed reconstructed dwelling will be 34.5' in height which is in compliance with the 35' height maximum pursuant to Section 240-70 – "Maximum building height." 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 raze and reconstruction of the pre-existing nonconforming single-family dwelling on subject property will not be more substantially detrimental than what exists as it will be reconstructed basically in the same footprint, will be increased approximately 4.5' in height to meet velocity zone regulations, will slightly improve the existing nonconforming setbacks and will greatly improve the total lot coverage.

Section 240-68 – "Setbacks." of the Code of Falmouth sets forth the requirements of front yard setbacks in sub-section A. and side and rear yard setbacks in sub-section B.

The Board finds that the pre-existing nonconforming single-family dwelling discussed herein was constructed circa 1940 and has been nonconforming with setback(s) since construction. Section 240-69 – "Maximum lot coverage." of the Code of Falmouth sets forth the maximum lot coverage requirements by structures and structures, parking and paving for a residential zoned district.

The Board finds that the pre-existing nonconforming single-family dwelling discussed herein was constructed circa 1940 and was in compliance with lot coverage by structures until 2002 when Town Meeting voted a change to zoning decreasing lot coverage by structures in a residential zone from 35% to 20%, making lot coverage by structures on subject property nonconforming. The Board further finds that lot coverage by structures, parking and paving has been nonconforming for some time [unknown when] and will be decreased by 15% [removing substantial paving] through the proposed plans discussed and reviewed herein.

The Board finds that the proposed raze and reconstruction of the pre-existing nonconforming single-family dwelling will comply with velocity zone flood plain regulations.

The Board finds according to the referral submitted by the Engineering Department that the reduction in pavement on subject property to be replaced with shell, will result in a net reduction in stormwater from the site. The Board further finds that the subject property is connected to Town sewer.

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 raze and reconstruction of the pre-existing nonconforming single-family dwelling on subject property as it will be reconstructed within the same footprint with improvement to the existing nonconforming setbacks and lot coverage.
- 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 subject property is connected to Town sewer according to the referral submitted by the Board of Health.
- 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.
- 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 Zylinski 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 Neal Dunn, Trustee (herein referred to as Applicant) under Section(s) 240-3, 240-68 and 240-69 of the Code of Falmouth to raze and reconstruct, bringing into compliance with the velocity zone regulations, the pre-existing nonconforming single-family dwelling located at 25 Moses Road, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Plot Plan" prepared for The Neal Dunn 2012 Revocable Trust of 25 Moses Road Falmouth, MA Sheet 1 of 3 drawn by J.E. Landers-Cauley, P.E. dated 1/7/2014 with a final revision date of 3/06/14 and with a Board date 'received' stamp of March 3/6/2014;
- "Existing Conditions Plan" prepared for The Neal Dunn 2012 Revocable Trust of 25 Moses Road Falmouth, MA Sheet 2 of 3 drawn by J.E. Landers-Cauley, P.E. dated 1/17/14 with a final revision date of 3/06/14 and with a Board date 'received' stamp of 3/6/2014;
- "Proposed Plan" prepared for the Neal Dunn 2012 Revocable Trust of 25 Moses Road Falmouth, MA Sheet 3 of 3 drawn by J.E. Landers-Cauley, P.E. dated 1/17/14 with a final revision date of 3/06/14 and with a Board date 'received' stamp of 3/6/2014; and
- "Existing and Proposed Plans, and Sections for the Dunn Residence" of 25 Moses Road Falmouth, MA drawn by D. Michael Collins Architects consisting of seven (7) pages with a date of 1/7/2014 and with a Board date 'received' stamp of January 13, 2014 [elevations, floor plans existing and proposed].

2. The applicant shall submit an 'as built' verifying the height of the structure at a 34.5' height as represented herein. The 'as built' shall be submitted prior to the final sign off of construction by the Building Department and Zoning Board of Appeals.

3. 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.

4. The Applicant shall meet the requirements of the Water Department regarding upgrade of water service or sign a waiver (see referral submitted to the file).

5. 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.)

6. 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: 7-14

Applicant: NEAL DUNN, TRUSTEE of Stow, MA

Subject Property: 25 Moses Road, North Falmouth, Massachusetts
Map 04A, Section 42, Parcel 000, Lot 088

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 7-14 Dunn / 25 Moses Rd, N. Falmouth / R&R posted to web 3/13/14 mm