

Zoning Board of Appeals Decisions Decisions for: 03-27-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 17-14

APPLICANT/OWNER: STEPHEN PARKER of Beaverton, OR

DEED/CERTIFICATE: Certificate 196972 – LC Plan 314-V, Lot 382

SUBJECT PROPERTY: 378 Acapesket Road, East Falmouth, Massachusetts
Map 40, Section 08, Parcel 002, Lot 382

Under a date of February 11, 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 one-story, four bedroom pre-existing nonconforming single-family dwelling with a walk-out basement and construct a two-story, four-bedroom single-family dwelling with walk-out basement and attached two-car garage on subject property located at 378 Acapesket Road in East Falmouth, Massachusetts.

A public hearing was held on March 27, 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, Acting Clerk Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

Jeff Ryther, P.E. with BSS Design, Inc. was present on behalf of the applicant/owner who is proposing to raze the pre-existing nonconforming ranch style dwelling with a walk-out basement that has a nonconforming 36' setback to the 3' contour line off the waters of Green Pond and a 7.5' setback to the northerly side yard property line and construct a two-story dwelling with attached two-car garage and walk-out basement that will comply with the side yard setback at 12.3' and improve the nonconforming setback to the 3' contour line with a 45' setback. Mr. Ryther explained that existing dwelling has four bedrooms and the proposed dwelling will as well; the existing septic system is only a couple years old and is designed for five bedrooms. The lot coverage by structures will be increased from 5.6% to 9.7%; the total lot coverage will be reduced by 11% due to removal of walkways [37.4% to 26.1%]. Mr. Ryther noted that the existing dwelling was constructed prior to the 1988 bylaw requiring a 50' setback from different bodies of waters, tidal ponds, tidal rivers or fresh water rivers or ponds. He further informed the Board that the applicant has been before the Conservation Commission and that they are asking applicant to have a 'Falmouth Friendly' lawn.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Water Department states: Upgrade to a 1" service or sign a waiver.

A referral submitted from the Conservation Commission Agent Mark Kasprzyk states: Notice of Intent filed through Conservation Commission. First hearing scheduled for February 27, 2014.

A referral submitted from the Board of Health Agent David Carignan states: No change in bedrooms. The plans of the proposed re-build depict a four bedroom dwelling.

A referral submitted from the Engineering Department had standard comments stating that any change in driveway or location of utilities will require permitting from appropriate Town department and to contain runoff on-site.

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

Clerk McNamara noted that there was no correspondence submitted from any abutters or interested

parties.

Board Questions:

Member Foreman asked if they are regarding any of the site.

Mr. Ryther stated that there will be some regrading due to walkways being removed and corner of dwelling.

Member Foreman asked what plantings, if any, Conservation Commission required.

Mr. Ryther said the requested native plants 3' off center (standard order).

Member Foreman asked what the driveway material will be.

Mr. Ryther said the proposed plan is crushed stone with an apron of cobblestone.

Member Johnson asked if the existing septic system will remain in same location and at same size.

Mr. Ryther stated yes – meets criteria and the existing septic is for a bedroom dwelling as approved by the Board of Health.

Member McNamara asked if Mr. Ryther had any idea on what the Order of Conditions from the Conservation Commission would require.

Mr. Ryther stated no as it is not written yet, but they did discuss 'Falmouth Friendly Law' and said plantings will be native plantings that shall be 3' off center plantings.

Member McNamara asked what the basement will be used for.

Mr. Ryther said as shown on Drawing A-03 – a TV area, pool table, a little gym area and a room with a murphy bed that will be used as the fourth bedroom for spill over company.

Member McNamara asked if there will be a change in the grade.

Mr. Ryther stated no – it will remain the same.

Member McNamara asked if the cupola is ornamental and what the height of the building would be if it is not ornamental.

John Dvorsack, Architect, said the cupola is ornamental and it would be 4' from the top of the ridge - the proposed height of the building is 30.5' [without the cupola] at street grade.

Member Cool asked if the three season porch would have heating or plumbing.

Mr. Dvorsack said it will have electrical.

Member Cool asked the difference in the ridge height from existing to proposed.

Mr. Dvorsack said proposed is approximately double in height – existing is approximately 15 to 16 feet in height.

Member Cool commented that the stormwater will be contained on-site.

Mr. Dvorsack stated correct.

Chairman Haddad asked if the applicant had given any thought to shifting the proposed house slightly to bring it into compliance with the 50' setback to the 3' contour line of Green Pond waters.

Mr. Ryther said that the setback to the 3' contour line has been improved through the proposed.

Mr. Dvorsack stated that if you turn the dwelling slightly and pull it closer to the street culvert will be created at the rear of the dwelling and impact the use of the basement and the view from the dwelling. He said the basement is an important function of the dwelling and we have to fit it into the grades or eliminate the walk-out function.

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 McNamara 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 378 Acapesket Road in East Falmouth contains 32,400 square feet of Residential B zoned land that is located within the Green Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze the pre-existing nonconforming one-story, four-bedroom, single-family dwelling with a walk-out basement and construct a two-story, four bedroom single-family dwelling with attached two-car garage and a walk-out basement. The existing nonconformities are a northerly side yard setback of 7.5' where a 10' setback is required pursuant to Section 240-68 B. of the Code of Falmouth and a 36' setback from the 3' contour line of the waters of Green Pond that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The applicant's representative noted that the existing dwelling was created prior to the 1988 bylaw that requires the 50' setback from certain bodies of water. The existing lot coverage by structures and by structures, parking and paving are in compliance with Section 240-69 A. of the Code of Falmouth. The proposed raze and reconstruction of the dwelling will reduce the total lot coverage by 11% and slightly increase the lot coverage by structure(s) keeping in compliance with said section of the bylaws. The proposed construction of the new dwelling will eliminate the nonconforming side yard setback creating a 12' setback and the nonconforming setback to the 3' contour line at the rear of the dwelling will be improved with a 45' setback. There will be no increase in the number of bedrooms and the Board of Health has acknowledged this in a referral submitted to this Board.

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 pre-existing nonconforming single-family dwelling and construction of a new dwelling that will be in compliance with dimensional requirements except for the 45' setback to 3' contour line off the waters of Green Pond is not substantially more detrimental than what currently exists. The Board further finds that the proposed dwelling is in keeping with the neighborhood as several of the homes in the area have been improved similarly to the proposed. Furthermore, the proposed dwelling will be an enhancement to the utilization of the property and dwelling by the residents.

The Board finds through testimony by the architect [Mr. Dvorsack] and project engineer [Jeff Ryther, P.E.] that to bring proposed dwelling into compliance with a 50' setback to the 3' contour line off the waters of Green Pond would impact the grade of the land and therefore the coastal bank. The Board further finds that compliance with the 50' setback to the 3' contour line would impact the use of the basement and eliminate the capability of creating a walk-out basement similar to what is existing.

The Board finds that the cupola as designed is ornamental and not included in the height of the structure.

The Board finds through the Conservation Commission referral and testimony by the applicant's representative that the applicant has made application to the Conservation under a 'Notice of Intent' filing. The Board further finds through testimony of the applicant's representative that the Conservation is requesting that the applicant have a 'Falmouth Friendly' lawn and that all plantings shall be native and planted 3' off center.

In addition to the above findings, the Board finds that the proposed razing of the existing dwelling and the construction of a new dwelling 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 two-story, four-bedroom single-family dwelling with an attached two-car garage and a walk-out basement as the plan eliminates one nonconforming setback (side yard), improves the setback to the 3' contour line off waters of Green Pond and is under the maximum lot coverage allowed by right in a residential zoned district pursuant to Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception. The proposed dwelling will maintain use as a single-family dwelling.
- 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 sewage disposal system is in place and signed off as a four bedroom system 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 service line or sign a waiver.
- 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 Foreman 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 5 – 0 to Grant the Special Permit to Stephen Parker (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze existing one-story, four-bedroom pre-existing nonconforming single-family dwelling with walk-out basement and construct a two-story, four-bedroom single-family dwelling with attached two-car garage and walk-out basement on subject property known as 378 Acapesket Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of existing dwelling, construction of new dwelling, 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:

- "Plot Plan – House Reconstruction" prepared for Stephen Parker Lot 382 (#378) Acapesket Road East Falmouth, Massachusetts, Sheet 1 of 1 drawn by BSS Design, Inc., dated February 5, 2014 with a final revision date of March 3, 2014 and a Board date 'received' stamp of March 13, 2014; and
- Architectural plans drawn by John Dvorsack Architect, LLC consisting of: Drawing EC-01 'Floor Plans Existing Conditions' dated 11/05/13; Drawing EC-02 'Existing Elevations' dated 2/12/2014; Drawing Number A-01 'First Floor Plan 1,482 Sq. Ft.' not dated; Drawing A-02 'Second Flr Plan 1,533 Sq Ft.' not dated; Drawing Number A-03 'Ground Flr Plan 1,239 Sq. Ft.' not dated; Drawing A-05 'Front Elevation' not dated; Drawing A-06 'Right Side Elevation' not dated; Drawing Number A-07 'Rear Elevation' not dated; and Drawing Number A-08 'Left Side Elevation' not dated – all Drawings had a Board date 'received' stamp of February 11, 2014.

2. There shall be no more than four (4) bedrooms on subject property.

- 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 DPW Water Division.
- 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: 17-14

Applicant: STEPHEN PARKER of Beaverton, OR

Subject Property: 378 Acapesket Road, East Falmouth, Massachusetts
Map 40, Section 08, Parcel 002, Lot 382

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 #17-14 Parker / 378 Acapesket Rd / R&R posted to web 4/9/14 mm