

Zoning Board of Appeals Decisions Decisions for: 02-20-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 2-14

APPLICANT: DANIEL N. DISCIULLO of Concord, MA

OWNER(S): Daniel N. Disciullo and Paul F. Rossini

DEED/CERTIFICATE: Certificate #162635 – Lot 13b, Plan 4286-A (Plate 17)

SUBJECT PROPERTY: 362 Maravista Avenue, Teaticket, MA
Map 46A, Section 09, Parcel 000, Lot 136

Under a date of January 7, 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 pre-existing nonconforming single-story, two-bedroom single-family dwelling and construct a two and one-half story single-family dwelling on subject property located at 362 Maravista Avenue, Teaticket, Massachusetts.

A public hearing was held on February 20, 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 Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

John Doyle, R.L.S. was present on behalf of the applicant and reviewed existing site conditions including the three nonconforming setbacks (front, south side yard and rear setbacks) and nonconforming lot coverage by structures. He explained that through the raze and reconstruction of the dwelling, the rear and south side yard setback will be made conforming and the front yard setback would be slightly improved; the lot coverage by structures will be slightly decreased. It is an existing two-bedroom dwelling and plans were revised to make the proposed 2.5 story dwelling a two-bedroom dwelling with the intention of a three-bedroom dwelling when hooked to Town sewer in the future. There is a basement in existing dwelling that will be eliminated through proposed as the property is located within the flood plain. In answer to the Engineering Department referral, dry wells will be put in at the down spouts to keep run-off on the site. The height of the proposed dwelling will be 30'10".

Clerk Zylinski read the Town Department referrals into the record.

A referral update from the Board of Health states: In an attempt to clarify my earlier remarks on this application, I would like to simply say that the septic system and house foundation setback relationship represented on the plot plan found in the project file would require a local upgrade approval from the Board of Health, unless the foundation was of a type that does not create a crawlspace or full cellar. The separation between the septic system and the foundation would not be a factor if the foundation was of a pier or sonotube type construction. The foundation detail on the plan was not clear enough to me to determine that the type of foundation was positively of a pier or sonotube type. It may be the intent of the applicant to submit more detailed foundation drawings with the building permit application.

A referral from the Engineering Department has standard language with the addition of: The project cannot direct any stormwater runoff to public property or right of ways. Roof drainage does not appear to be addressed on the plans.

A referral from the Water Department notes that there is an existing 1" service.

A referral from the Conservation Commission states: No issue as long as stormwater is contained on the

property.

The referral submitted from Planning Department had no comment.

Board Questions:

Member Zylinski asked if the applicant had received a variance from the Board of Health.

Mr. Doyle stated that the applicant could mitigate foundation or change foundation plan – will discuss with Board of Health.

Member Zylinski asked if there was a soil analysis.

Mr. Doyle stated yes 0 – 36 coarse sand.

Member Johnson asked if application was made to the Conservation Commission.

Mr. Doyle stated yes as an RDA.

Member Johnson asked if driveway was pervious.

Mr. Doyle stated no, it is impervious.

Member Bielan asked if basement or crawlspace would be constructed.

Mr. Doyle stated no basement or crawl space.

Member McNamara asked if the Building Commissioner designated the front yard on the corner lot.

Mr. Doyle stated no.

Member McNamara asked if there will be any grade change through the foundation removal and house construction.

Mr. Doyle stated no.

Member Cool asked if a tabulation on height of structures was done in the general vicinity.

Mr. Doyle noted that the house directly across the street is same.

Chairman Haddad asked if the third floor (1/2 floor) will have mechanical.

Mr. Doyle said original plan was for a bedroom and area for mechanical utilities and until the Town sewer is in it will be storage area and remain unfinished and unheated.

Member McNamara asked if there are any plans for accessory structures on lot.

Mr. Doyle stated no.

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

There was no public comment.

Member Zylinski 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 362 Maravista Avenue in Teaticket 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 of the Code of Falmouth to raze the existing one-story, two-bedroom single-family dwelling with basement and construct a two and one-half story, two-bedroom single family dwelling with no basement on subject property located at 362 Maravista Avenue, Teaticket, Massachusetts. The subject property is on a corner lot off Maravista Avenue and Pocasset Street and therefore has two front yards. The setback to the property line from the dwelling off Pocasset has a conforming setback of 33.6'; and the setback to the front property line from the dwelling off Maravista is nonconforming at 14.7' – both of which require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The dwelling has a nonconforming setback at the southerly property line (side yard) of .5' and at the easterly property line (rear yard) of 9.3' – both require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 23.47% which exceeds the 20% maximum allowed under Section 240-69 A. of the Code of Falmouth; lot coverage by structures, parking and paving is conforming at 32.9% [under the 40% maximum allowed] under same Section of the Code of Falmouth. The proposed dwelling will be 2.5 stories with the half floor for future third bedroom when area is Town sewered and to hold mechanical utilities. It is noted herein that the half floor will remain unfinished and used as storage area until dwelling is hooked to Town sewer.

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 existing two-bedroom one-story pre-existing nonconforming dwelling and construct a 2.5 story two-bedroom dwelling substantially within same footprint will not be substantially more detrimental than what currently exists. The Board further finds that through construction of the proposed dwelling, the nonconforming southerly side yard and rear yard setback will be in compliance with Section 240-68 B. of the Code of Falmouth; the front yard setback will be slightly improved with a 15.3' setback to the front property line off Maravista Avenue. Furthermore, the Board finds that the lot coverage by structures will be slightly improved from 23.47% to 23.42%.

The Board further finds through testimony of the applicant's representative that there are no accessory structures proposed on subject property. The Board further finds that there will be no change in the grade of subject property through the proposed construction.

The Board finds that the intent by the applicant is to have a third bedroom on the third level (1/2 floor) when the property is hooked to the future Town sewer. This Board has no issues with the plans as long as the third level bedroom is not finished until said time that the property is hooked to the Town Sewer and the applicant/homeowner has approval for the third bedroom by the Wastewater Superintendent.

In addition to the above findings, the Board finds that the proposed raze of existing dwelling and construction of a new dwelling represented herein 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 dwelling as the plans show two nonconforming setbacks – a side and a rear setback - becoming conforming according to Town code, a nonconforming front yard setback being improved and the slight improvement to the nonconforming 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 currently no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site. In the future the applicant may have a third bedroom as conditioned herein, which this Board feels will have a benign effect on traffic flow and safety.

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 will be approved by the Board of Health as a two-bedroom system at the time of a building permit being issued.

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

the Water Department stated that there is an existing 1" water service 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 Zylinski 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 Daniel N. Disciullo (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze the existing two-bedroom, one-story nonconforming single-family dwelling and construct a less nonconforming two-bedroom, 2.5 story dwelling on subject property known as 362 Maravista Avenue, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing two-bedroom dwelling and basement, construction of 2.5 story dwelling with no basement, all setbacks, lot coverage, height of dwelling 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:

- Hand drawn existing floor plans consisting of two pages with a Board date 'received' stamp of February 20, 2014;
- "Plot Plan of Land" prepared for Daniel N. Disciullo showing the Existing Conditions at 362 Maravista Avenue, Falmouth drawn by John P. Doyle, III, R.L.S. dated December 23, 2013 and with a Board date 'received' stamp of January 21, 2014;
- "Site and Sewage Plan" prepared for Daniel N. Disciullo Proposed 2 Bedroom Dwelling at 362 Maravista Avenue Falmouth, MA drawn by John P. Doyle, III, P.L.S. dated December 23, 2013 with a Board date 'received' stamp of January 21, 2014; and
- Architectural Plans, consisting of seven (7) pages showing elevations and all three floor plans – designer not noted and date of plan not noted – with a Board date 'received' stamp of January 23, 2014 on the Proposed Front Elevation, Proposed First, Second, Third Floor Plans and Foundation Plan and a Board date 'received' stamp of January 28, 2014 on the Right, Rear and Left Elevation Plans.

2. There shall be no more than two bedrooms on subject property until such time that the property is hooked to the Town Sewer. Then with approval from the Wastewater Superintendent, the applicant may create a third bedroom on the third level [1/2 floor] of the dwelling with plans to be reviewed and approved by the Zoning Administrator. The third floor shall be used as storage and remain unfinished until said time.

3. Storm water shall be maintained on-site by dry wells being located at down spouts off structure.

4. 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.

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: 2-14

Applicant: DANIEL N. DISCIULLO of Holliston, MA

Subject Property: 362 Maravista Avenue, Teaticket, MA
Map 46A, Section 09, Parcel 000, Lot 136

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 2-14 Disciullo / 362 Maravista Ave., E. Fal / R&R posted to web 2/28/14 mm