

## Zoning Board of Appeals Decisions Decisions for: 06-25-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 44-15

APPLICANT(S)/OWNER: DAVID L. GILLESPIE & MARY E. GILLESPIE  
of Bristol, RI

DEED/CERTIFICATE: Book 25355 / Page 294

SUBJECT PROPERTY: 73 Paola Drive, East Falmouth, Massachusetts  
Assessor's Map: Map 33, Section 22, Parcel 017, Lot 016

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 13, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to demolish the pre-existing nonconforming single-family dwelling and reconstruct a new dwelling on subject property located at 73 Paola Drive, East Falmouth, Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on June 25, 2015.
4. The public hearing was terminated on June 25, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Vice Chair Kimberly Bielán, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy voted to Grant the Special Permit with conditions. Minutes of the hearing are on file with the Board of Appeals.
5. The applicant was represented at the hearing by Tim Santos, P.E. of Holmes and McGrath, Inc. who reviewed and discussed existing site conditions and proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

Letters/E-mails/Information from Applicant/Representative(s)

5/13/2015 Holmes and McGrath, Inc. submitted, on behalf of the applicant, an application with a narrative of the proposed project as well as plans noted below.

Letters/Referrals/E-mails from Town Departments

5/14/2015 Referral submitted by the Assistant Town Planner with no comment.

5/19/2015 Referral submitted by the Building Commissioner with no comment.

5/20/2015 Referral submitted by the Marine & Environmental Services with no comment.

5/15/2015 Referral submitted by the Board of Health Agent with no comment.

6/16/2015 Referral submitted by the Engineering Department with standard comments and that Paola Drive is a private right of way in this area; any connections or alterations to public utilities would require permission from the appropriate Town Department; and no stormwater runoff onto public property, abutters property or right of ways.

Plans submitted by Applicant/Applicant's Representative

5/13/2015 "Plan of Existing Conditions" prepared for David L. & Mary E. Gillespie for Lot 16, #73 Paola Drive in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc., dated April 6, 2015 as stamped and signed by Joel R. Kubick, PLS - with a Board date 'received' stamp of May 13, 2015;

"Plan of Proposed Sewage Disposal System" prepared for David L. & Mary E. Gillespie for Lot 16, #73 Paola Drive in East Falmouth, MA – Sheet 1 of 2 drawn by Holmes and McGrath, Inc., dated April 14, 2015 as stamped and signed by Joel R. Kubick, PLS and with a Board date 'received' stamp of May 13, 2015;

"Construction Details of Proposed Sewage Disposal System" prepared for David L. & Mary E. Gillespie for Lot 16, #73 Paola Drive in East Falmouth, MA – Sheet 2 of 2 drawn by Holmes and McGrath, Inc. dated April 14, 2015 as stamped and signed by Timothy M. Santos, PE and with a Board date 'received' stamp of May 13, 2015;

"Existing" architectural plans for Gillespie House 73 Paola Drive Falmouth, MA as drawn by Denise D'Ambrosi Bonoli, AIA – plans not dated – consisting of four (4) pages showing floor plans and elevations of dwelling as existing with a Board date 'received' stamp of May 13, 2015; and

"Proposed" architectural plans for Gillespie House 73 Paola Drive Falmouth, MA as drawn by Denise D'Ambrosi Bonoli, AIA – plans not dated – consisting of four (4) pages showing proposed floor plans and elevations with a Board date 'received' stamp of May 13, 2015.

Hearing:

Tim Santos with Holmes and McGrath, Inc. was present on behalf of the applicant and explained the proposed plans to raze the existing six-bedroom, split level dwelling and construct a five-bedroom two-story dwelling. Mr. Santos reviewed the existing nonconforming northerly side yard setback of 8.9' that will be brought into compliance through the proposed plans. There is also a nonconforming setback of 41' to the 3' contour line off the waters of Bournes Pond. He explained that a new septic system is proposed and will be located in the front yard due to the proximity of the property to the waters of Bournes Pond, and that the proposed dwelling will have a conforming setback of 25' to the street. He further explained that the proposed structure will maintain the nonconforming setback of 41' to the 3' contour line. The proposed dwelling structure will have a height of 27.6' and the lot coverage will be in compliance with the bylaw. Mr. Santos noted that a shed at the northerly side yard will be eliminated from the property and not replaced.

The Board discussed the proposed plans with Mr. Santos, who addressed all their questions and concerns.

Chairman Foreman asked for any public comment in support or opposition of the proposed additions.

Carol Dangelo of 57 Paola Drive spoke in support of the proposed project.

Member Bielan made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Foreman 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 73 Paola Drive in East Falmouth contains 17,500 square feet of Agricultural B zoned land that is located within the Bournes Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to raze the pre-existing nonconforming split-level six-bedroom, single-family dwelling and construct a four-bedroom, two-story dwelling with attached garage. The existing dwelling structure has a nonconforming northerly side yard setback to the property line of 8.9' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The structure also has a nonconforming setback of 41' to the 3' contour line off the waters of Bournes Pond that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The proposed dwelling will have nonconforming setbacks to all property lines, thus eliminating the nonconforming side yard setback; and the nonconforming setback to the 3' contour line will remain nonconforming as existing. The lot coverage by both structures and structures, parking and paving exists in compliance with Section 240-69 A. of the Code of Falmouth and will remain in compliance with said section as shown on the plans submitted and reviewed herein.

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.

Section 240-68 of the Code of Falmouth – "Setbacks" sets forth the required setbacks per zoning district. Sub-section D. requires that no structures can be constructed within 50' of certain bodies of waters.

The Board finds that the existing dwelling structure on subject property is nonconforming with a 41' setback to the 3' contour line off the waters of Bournes Pond, which requires a 50' setback. The Board further finds that the deck off the proposed dwelling will maintain the 41' setback to the 3' contour line off the waters of Bournes Pond as shown on the plans submitted and noted herein.

The Board finds that the proposed razing and reconstruction of the existing nonconforming dwelling will not be more substantially detrimental than what exists. The Board further finds that the proposed dwelling plans eliminate a nonconforming side yard setback and does not create any new nonconforming setback. Furthermore, the Board finds that the lot coverage by structures and structures, parking and paving, as proposed herein will comply with Section 240-69 A. of the Code of Falmouth.

The Board finds that the dwelling as proposed herein, reduces the bedroom count from six (6) bedrooms to five (5) bedrooms (one room meets criteria of bedroom shown as an office with French doors on first floor plan). The Board further finds that the height of the proposed dwelling is shown and represented as 27'6" which is below the 35' maximum height in Section 240-70 of the Code of Falmouth.

The Board finds that the shed shown on the "Plan of Existing Conditions" that is encroaching the side yard property line is being eliminated and not replaced.

In addition to the above findings, the Board finds that the proposed two-story 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 reconstruction of a dwelling as the proposed plans eliminate a nonconforming side yard setback, nonconforming shed and the lot coverage is in compliance with the bylaws as noted above.
- B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used 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 the driveway proposed will eliminate one curb cut, replacing the circular drive with a standard one entrance driveway off Paola Drive.
- 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; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is being upgraded and the plans submitted [Sheet 2 of 2 "Construction Details" show the new system to be a five (5) bedroom system. No comment on 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 as there was no referral submitted from the Water Department.

- 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 Bielan made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 David L. and Mary E. Gillespie (herein referred to as Applicant) under Section(s) 240-240-3 C. and 240-68 D. of the Code of Falmouth to raze the pre-existing nonconforming single-family dwelling and construct a new dwelling with the elimination of the nonconforming side yard setback on subject property known as 73 Paola Drive, 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 dwelling, lot coverage, elimination of existing shed 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:

- "Plan of Existing Conditions" prepared for David L. & Mary E. Gillespie for Lot 16, #73 Paola Drive in East Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc., dated April 6, 2015 as stamped and signed by Joel R. Kubick, PLS - with a Board date 'received' stamp of May 13, 2015;

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- "Proposed" architectural plans for Gillespie House 73 Paola Drive Falmouth, MA as drawn by Denise D'Ambrosi Bonoli, AIA – plans not dated – consisting of four (4) pages showing proposed floor plans and elevations with a Board date 'received' stamp of May 13, 2015.

2. The applicant or his/her representative/contractor shall submit to the Board of Appeals, post construction and prior to final inspection, an as-built plan verifying all setbacks from the structure to the property lines (front and side) as well as the setback to the 3' contour line off the waters of Bournes Pond.

3. There shall be no more than five (5) bedrooms allowed on subject property.

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. The Applicant shall meet the requirements of the DPW Water Division.

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: 44-15

Applicant: DAVID L. GILLESPIE & MARY E. GILLESPIE

Subject Property: 73 Paola Drive, East Falmouth, Massachusetts  
Map 33, Section 22, Parcel 017, Lot 016

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.

\_\_\_\_\_  
Kenneth Foreman, 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 44-15 / Gillespie / Filed with the T.C on 7/2/15