

## Zoning Board of Appeals Decisions Decisions for: 01-08-2015

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 94-14

APPLICANT/OWNER: PETER M. ANNICELLI and LAURA M. ANNICELLI  
of Duxbury, MA

DEED/CERTIFICATE: Book 25712 / Page 141

SUBJECT PROPERTY: 471 Central Avenue, East Falmouth, Massachusetts  
Map 40A, Section 19, Parcel 002, Lot 001

DATE OF HEARING: January 8, 2015

SUMMARY: Granted with Conditions

Under a date of November 12, 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 modify Special Permits 151-03 and 11-12 to raze and reconstruct the rear dwelling on subject property known as 471 Central Avenue, East Falmouth, Massachusetts.

### Procedural History

1. On November 12, 2014 Peter M. and Laura M. Annicelli, through their representative, Attorney Robert H. Ament, applied for a Special Permit to modify previous Special Permits 151-03 and 11-12 under Section 240-3 of the Code of Falmouth to raze and reconstruct the rear dwelling on subject property known as 471 Central Avenue in East Falmouth. A modification of said permits was also granted in 2013 – Special Permit 70-13 to construct a two level open porch, enclose an existing covered porch and modify front step and door; this special permit was not acted on due to new FEMA regulations. The subject property has two separate dwellings on the lot that consists of 16,900 square feet of Residential B zoned land that is located within the Bournes Pond Coastal Pond Overlay District.
2. A duly advertised public hearing was opened on January 8, 2015 with sitting members: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Terrence Hurrie and Alternate Member Mark Cool.
3. The public hearing was closed on January 8, 2015 with a decision rendered by the Board.
4. The Board received documents and exhibits submitted to the file by the applicant, professional individuals on behalf of the applicant, and/or abutters or interested parties as set forth below:

### Letters/E-mails from Abutters

Received 11/24/2014 Letter of support of application from Kevin Gregory of 89 Bournes Pond Road, East Falmouth

Received 11/24/2014 Letter of support for applicant from Rick von Turkovich of 459 Central Avenue, East Falmouth

Received 11/24/2014 Letter of support from Cynthia and Robert Bennink of 411 Central Avenue, East Falmouth

Received 11/24/2014 Letter of support from Becca and Jeff Flynn of 57 Jewelers Avenue, East Falmouth

Received 11/20/2014 Letter of support from Mark and Wendy Murphy of 72 Bournes Pond Road in East Falmouth

Received 11/20/2014 Letter of support from Jay M. and Lia S. Decoteau of 507 Central Avenue, East Falmouth

Received 11/20/2014 Letter of support from Karen Sacchetti of 461 Central Avenue, East Falmouth

Received 11/20/2014 Letter of support from Robert Olsen of 25 Bayberry Road, East Falmouth

Received 11/19/2014 Letter of support from Robert and Pamela Gibson of 77 Bournes Pond Road, East Falmouth

Received 11/12/2014 Letter of support from Jennifer Hughes, Trustee of 80 Bournes Pond Road, East Falmouth

Received 11/12/2014 Letter of support from Gregg Blackburn of 473 Central Avenue, East Falmouth

Received 11/12/2014 Letter of support from Pat Gans of 97 Jewelers Avenue, East Falmouth

Received 11/12/2014 Letter of support from Ned and Anne Pride of 94 Bournes Farm Road, East Falmouth

Received 11/3/2014 Letter of support from Robert and Tina Maloney of 14 Yacht Club Road, East Falmouth

Communication from Applicant's Representatives

Received 11/12/2014 Letter from Hutker Architects (Project Architects) regarding new FEMA regulations in relation to proposed height of dwelling

Received 1/5/2015 Letter from Attorney Ament to Zoning Administrator in explanation of revised architectural plans

Received 1/7/2015 Letter from Attorney Ament with 3 attachments: 1) Copy of Conservation Commission's "Order of Conditions"; 2) Letter from Registered Architect at Hutker Associates regarding height of existing rear dwelling; and 3) Copy of Assessors' map of Menauhant showing properties who submitted letters of support to file.

Letters/Referrals from Town Departments

Received 12/17/2014 A referral from the Board of Health regarding pending hearing for Variance (1/5/15 hearing date)

Received 1/6/2015 An e-mail from Health Agent Carignan informing the Board of Appeals that the application for variance on subject property was approved.

Received 11/17/2014 A referral from the Conservation Commission informing the Board of pending hearing for Notice of Intent.

The Commission approved the application and Attorney Ament submitted a copy of the Decision of "Order of Conditions" on 1/7/2015.

Received 11/21/2014 A referral from the Engineering department with standard comments and a note regarding the abandonment of abutting Wheaton Street in 1970.

Received 11/13/2014 A referral was submitted from the Planning Department with no comment.

Received 11/18/2014 A referral was submitted from the Building Department with no comment.

Plans Submitted from Applicant/Representatives

Received 11/12/2014 "Addition & Renovation to: Annicelli Residence 471 Central Avenue, East Falmouth, MA" - Drawing AB1 'Existing Elevations' and Drawing AB2 'Existing Floor Plans' - both dated 7/9/2013, drawn by Giampietro Architects with a Board date 'received' stamp of November 12, 2014.

Received 12/30/2014 "Plot Plan - Reconstruction" prepared for Peter and Laura Annicelli Lot 1 (#471) Central Avenue Menauhant, East Falmouth, Massachusetts, consisting of: Sheet 1 of 3 'Site Plan' dated 11/4/2014 with final revision of 12/16/14; Sheet 2 of 3 'SSDS Details' dated 11/4/2014 and Sheet 3 of 3 'SSDS Details' dated 12/16/2014 - all drawn by BSS Design, Inc. and with a Board date 'received' stamp

of December 30, 2014.

Received 1/5/2015 "Annicelli Residence 471 Central Avenue Manauhant, East Falmouth, MA" architectural plans consisting of: Drawing A000 'Title Sheet' dated 11/18/14, Drawing A100 'Foundation Plan' dated 11/3/2014, Drawing A101 'First Floor Plan' dated 11/3/2014, Drawing A102 'Second Floor Plan' dated 11/3/2014, Drawing A103 'Third Floor Plan' dated 11/3/2014, Drawing A201 'Exterior Elevations' dated 11/3/2014 and Drawing A202 'Exterior Elevations' dated 11/3/2014 – all Drawings are by Hutker Architects and with a Board date 'received' stamp of January 5, 2015.

#### Hearing Process

The Board asked questions of the applicant's representatives present which were: Attorney Robert H. Ament and Matthew Schiffer with Hutker Architects. All issues were addressed by applicant's representatives, including addressing the new FEMA regulations, proposed height of new dwelling and increase in lot coverage under Section 240-69 E. – specifically the bulk of the proposed dwelling due to its design and height.

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 Foreman 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 471 Central Avenue in East Falmouth contains 16,900 square feet of Residential B zoned land that is located within the Bournes Pond Coastal Pond Overlay District. The Applicant applied under Section(s) 240-3 of the Code of Falmouth to raze the existing single-family dwelling, rear dwelling structure, on the subject property. The nonconformities on subject property are: the front dwelling unit is less than 1' from the front property line off Central Avenue which requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; the front dwelling structure has a 0' setback on the south side of the dwelling to the side yard property line which requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and there are two dwellings on subject property wherein according to Section 240-19 of the Code of Falmouth only a one-family detached house is allowed. The plan submitted shows that there are two dwelling structures on subject property which the Board acknowledged in a modification Special Permit #11-12 under Section 240-3 A. of the Code of Falmouth that states: "... Anything to the contrary in the zoning bylaw notwithstanding, the residential use of two or more dwellings on a single lot shall be deemed a pre-existing nonconforming use if commenced prior to May 19, 1959, and may only be altered, extended or modified by special permit pursuant to this section provided the Board of Appeals finds through a preponderance of credible evidence that said use commenced prior to May 19, 1959, and has not been abandoned or not used for a period of two years or more. In approving any alteration, extension or modification the Board of Appeals shall require that the number of dwelling units shall be limited to the same as in existence on May 19, 1959." The proposed plan is to raze the existing rear dwelling structure on subject property and construct a new dwelling that will be in compliance with new FEMA regulations. Also noted in the file is a Special Permit issued in 2003 for a deck addition to the front dwelling structure.

The applicant did not take action on a special permit to modify previous special permit issued in 2013 [#70-13] due to new FEMA regulations and is therefore applying to raze the subject dwelling and reconstruct a new dwelling to meet said regulations. The proposed dwelling is substantially within existing footprint notwithstanding the wrap around deck that is proposed. The architect designed the house to meet FEMA regulations and the height will be 34'10". The setbacks conform but the lot coverage will be increased from 18.25% to 24.88%, exceeding the 20% maximum allowed by-right in a residential district. The new dwelling will remain a four bedroom dwelling and the septic system will be upgraded. It was noted that there is a septic system on subject property for each of the two dwellings.

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 rear dwelling on subject property that is proposed herein to be razed and a new dwelling constructed that will meet FEMA regulations will not be substantially more detrimental than the current dwelling. The Board further finds that there was substantial support from abutters submitted to the file for the new dwelling as proposed.

The Board finds that there will be no increase in the number of bedrooms on subject property through approval of this application. The Board further finds through testimony of the applicant's representative that there is no intention to add any accessory structures on subject property. Furthermore, the Board finds that the design for the wrap-around deck on the plans submitted is to reduce the appearance of bulk of the new dwelling.

In addition to the above findings, the Board finds that the proposed razing of the existing rear dwelling structure on subject property and the proposed new construction and design 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 discussed and represented herein as the structure will be in conformance with all setbacks pursuant to Section 240-68 A. and B.; and that the increase in lot coverage to 24.88% under Section 240-69 E. may be allowed herein by the Board as they considered the effect on the neighborhood, abutters, any adverse impact on a view or vista from the public way and any effect on a coastal embayment.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception. The fact of the two dwellings on the subject property was thoroughly vetted by the Board under 240-3 A. in the 2012 special permit.
- 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 adverse impact on the neighborhood's visual character; and there is no adverse impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system, for this dwelling only on subject property, 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 the existing dwellings on site. However, the Applicant should contact the Town Water Department regarding updating of water system as the Board did not receive a referral from the Water Department on this application.
- 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 Bielan seconded the motion. Motion carried 4 – 1 with Chairman Haddad in opposition.

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 to 1 to Grant the Special Permit as modification of previous special permits for subject property to Peter M. and Laura M. Annicelli (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze the existing rear dwelling structure and construct a new dwelling on subject property known as 471 Central Avenue, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing rear dwelling on subject property, construction of new dwelling, all setbacks, height of dwelling, lot coverage and use of proposed dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Reconstruction" prepared for Peter and Laura Annicelli Lot 1 (#471) Central Avenue Manauhant, East Falmouth, Massachusetts", consisting of: Sheet 1 of 3 'Site Plan' dated 11/4/2014 with final revision of 12/16/14; Sheet 2 of 3 'SSDS Details' dated 11/4/2014 and Sheet 3 of 3 'SSDS Details' dated 12/16/2014 - all drawn by BSS Design, Inc. and with a Board date 'received' stamp of December 30, 2014.
  - "Annicelli Residence 471 Central Avenue Manauhant, East Falmouth, MA" architectural plans consisting of: Drawing A000 'Title Sheet' dated 11/18/14, Drawing A100 'Foundation Plan' dated 11/3/2014, Drawing A101 'First Floor Plan' dated 11/3/2014, Drawing A102 'Second Floor Plan' dated 11/3/2014, Drawing A103 'Third Floor Plan' dated 11/3/2014, Drawing A201 'Exterior Elevations' dated 11/3/2014 and Drawing A202 'Exterior Elevations' dated 11/3/2014 – all Drawings are by Hutker Architects and with a Board date 'received' stamp of January 5, 2015.
2. There shall be no more than four (4) bedrooms allowed in the dwelling proposed and approved herein.
  3. The third level of the dwelling proposed and as represented and discussed herein shall have only one bedroom on said level and a bathroom as shown on plan noted in Condition 1 above. As represented the remaining space on the third level will be for storage and mechanical.
  4. There shall be no accessory structures located anywhere on subject property, whether servicing this dwelling or the front dwelling on said property, without further approval 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. The Applicant shall meet the requirements of the DPW Water Division.
  7. 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.)
  8. 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: 94-14

Applicant: PETER M. ANNICELLI and LAURA M. ANNICELLI  
of Duxbury, MA

Subject Property: 471 Central Avenue, East Falmouth, MA  
Map 40A, Section 19, Parcel 002, Lot 001

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 – 1 to Grant the Special Permit as modification of previous special permits noted herein and as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

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Kimberly Bielan, Clerk, Board of Appeals

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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 #94-14 Annicelli - 471 Central Ave / Mod SP r&r posted 1/21/15 mm