

Zoning Board of Appeals Decisions Decisions for: 10-08-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 83-15

APPLICANT(S)/OWNER: RICHARD M. SLAPSYS and LYNN SLAPSYS of Amherst, NH

DEED/CERTIFICATE: Certificate #191471 - Lot 513 - Plan 4286 N

SUBJECT PROPERTY: 49 Narragansett Street, Teaticket, MA
Assessor's Map: Map 39A, Section 02, Parcel 000, Lot 513

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of September 3, 2015, 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 partially raze and reconstruct a portion of the pre-existing nonconforming single-family dwelling on subject property known as 49 Narragansett Street, Teaticket, 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 October 8, 2015.
4. The public hearing was terminated on October 8, 2015, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Contractor Harold Loyd who reviewed and discussed 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)

9/2/2015 E-mail from Jeffrey J. Laurin with BKA Architects, Inc. regarding height of existing structure and use of basement.

Letters/Referrals/E-mails from Town Departments

9/8/2015 Referral submitted by the Fire Rescue Department with no comment.

9/10/2015 Referral submitted by the Planning Department with no comment.

9/16/2015 Referral submitted by the Water Superintendent (Rafferty) that states: Applicant to coordinate any water service relocations with DPW Water at 416 Gifford Street.

9/21/2015 Referral submitted by the Building Commissioner (Gore) with no comment.

10/8/2015 Referral submitted by the Conservation Commission Agent (Kasprzyk) that states: Outside ConCom jurisdiction, but keep stormwater on property.

10/8/2015 Referral submitted by the Board of Health Agent (Carignan) states: No objections to the project except, if the foundation is to be replaced, the new foundation would not meet the 20 foot setback required to the existing leaching pit. The project proponent would be required to have Board of Health approval of that plan before the Health Department would sign off on a building permit. It is understood that the sewer under construction would eliminate the septic system, but unless the portion of the existing foundation within 20' of the leaching pit remains, the Board of Health approval would be necessary.

Plans submitted by Applicant/Applicant's Representative

9/2/2015 "Existing Conditions Plan located at 49 Narragansett Street East Falmouth, MA" prepared for Richard & Lynn Slapsys drawn by MacDougall Surveying & Associates – Sheet 1 of 1, stamped and dated by Edward A. Stone, PLS on July 20, 2015 and with a Board date 'received' stamp of September 2, 2015; and

"Addition & Alterations to the Slapsys Residence 49 Narragansett Street Falmouth, MA" drawn by CL2 & Associates consisting of architectural Drawings E1.1 'Existing Floor Plans' dated 9/2/15, E1.2 'Existing Elevations' dated 9/2/2015, A1.1 'First Floor Construction Plan & Typical Exterior Wall Types' dated 9/2/2015, A1.2 'Second Floor Construction Plan' dated 9/2/2015, A2.0 'Foundation Plan' dated 9/2/2015, A2.1 'Framing Plans' dated 9/2/2015, A4.1 'Elevations' dated 9/2/2015 and A5.1 'Sections, Details & System Notes' dated 9/2/2015 – all with a Board date 'received' stamp of September 2, 2015.

Hearing:

Harold Loyd, Contractor for the applicant was present and reviewed the existing site conditions and the proposed razing of northwesterly half of the existing one-story dwelling and reconstruct a new two-story portion in the same footprint. The height of the new portion would be 21.6' and will not create any new nonconforming setback. The lot coverage by structures will remain the same. There will be only three bedrooms and we will work with the Board of Health to resolve concerns that they have on the setback. Mr. Loyd stated that the shed in the back yard (nonconforming setback of 2.5' – should be 3') will not be eliminated, but it will be possible to relocate so as to meet setback requirement.

The Board discussed plans with Mr. Loyd, including the shed. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed additions. There was no public comment.

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

Chairman Bielan 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 49 Narragansett Street in Teaticket contains 6,000 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 a portion of the existing one-story dwelling and reconstructing that portion as two-story. The structure has a nonconforming setback of 5.4' to the easterly side yard property line and a 7.3' setback to the rear property line – both require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The existing shed in the rear of the property has a nonconforming setback of 2.1' to the westerly side yard property line. Lot coverage by structures is nonconforming at 29% as it exceeds the 20% by right maximum under Section 240-69 A. of

the Code of Falmouth. The reconstruction of a portion of the dwelling will not increase the nonconforming setback to the side yard as the portion being reconstructed is on the west side of existing dwelling. The lot coverage by structures will remain at 29% as the reconstruction will be in existing footprint.

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 reconstruction of the westerly portion of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the two-story portion proposed is at a reasonable height of 21.6' and its bulk will not impact the character of the neighborhood or subject property. Furthermore, the Board finds that there will be no increase to the nonconforming setbacks and lot coverage by structures through this 'reconstruction'.

The Board finds that the proposed reconstruction of the westerly portion of the dwelling from a one-story to a two-story portion does not include increasing the number of bedrooms existing at three. The Board further finds the proposed 'study' on the first floor (Drawing A1.1) and the proposed 'office' on the second floor (Drawing A1.2) both have cased openings of six feet (6') and are not considered bedrooms; and will remain with cased openings.

The Board finds through testimony of the applicant's representative, Harold Loyd, that the applicant will work with the Board of Health to resolve all concerns regarding the septic system as stated in the referral from the Board of Health noted herein. The Board further finds through testimony by the applicant's representative, that the applicant is desirous of keeping the existing shed with the possibility, if the Board deems it necessary, of relocating said shed to meet required setbacks.

The Board finds that the proposed raze and reconstruction of the westerly portion of the existing dwelling on subject property will be an enhancement of the utilization of the dwelling by its residents. The Board further finds that the nonconforming setbacks exist on the easterly portion of the existing dwelling that will not be altered and therefore will remain unchanged.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the westerly portion of the existing 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 partial raze and reconstruction as there will be no increase in the existing nonconformities and no new nonconformities created.

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 sewage disposal system is in place and signed off as a three bedroom system by the Board of Health, however, due to the razing of a portion of the building, the septic components will not meet setback requirements. The applicant will work with the Board of Health to resolve the issues prior to issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site and the applicant shall contact the Water Department prior to work commencing 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 Murphy 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 Richard and Lynn Slapsys (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct a portion of the pre-existing nonconforming single-family dwelling on subject property known as 49 Narragansett Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the westerly portion of the dwelling, reconstruction of same, all setbacks, height of proposed portion, lot coverage and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Existing Conditions Plan located at 49 Narragansett Street East Falmouth, MA" prepared for Richard & Lynn Slapsys drawn by MacDougall Surveying & Associates – Sheet 1 of 1, stamped and dated by Edward A. Stone, PLS on July 20, 2015 and with a Board date 'received' stamp of September 2, 2015; and

- "Addition & Alterations to the Slapsys Residence 49 Narragansett Street Falmouth, MA" drawn by CL2 & Associates consisting of architectural Drawings E1.1 'Existing Floor Plans' dated 9/2/15, E1.2 'Existing Elevations' dated 9/2/2015, A1.1 'First Floor Construction Plan & Typical Exterior Wall Types' dated 9/2/2015, A1.2 'Second Floor Construction Plan' dated 9/2/2015, A2.0 'Foundation Plan' dated 9/2/2015, A2.1 'Framing Plans' dated 9/2/2015, A4.1 'Elevations' dated 9/2/2015 and A5.1 'Sections, Details & System Notes' dated 9/2/2015 – all with a Board date 'received' stamp of September 2, 2015.

2. There shall be no more than three bedrooms on subject property.

3. The proposed first floor 'study' shown on Drawing A1.1 and the proposed second floor 'office' shown on Drawing A1.2 – both drawings noted in Condition 1 above – shall remain with a six foot (6') cased opening. No doors shall be installed at either room, both the 'study' and the 'office' shall remain open.

4. The applicant shall submit an 'as-built' site/plot plan, post-construction, to ensure that lot coverage and setbacks remain as shown on the "Existing Conditions Plan" noted in Condition 1 above.

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: 83-15

Applicant: RICHARD M. SLAPSYS & LYNN SLAPSYS of Amherst, NH

Subject Property: 49 Narragansett Street, Teaticket, Massachusetts
Map 39A, Section 02, Parcel 000, Lot 513

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.

Kimberly Bielan, 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 83-15 Slapsys /Filed w/ Town Clerk 10/19/15