

## Zoning Board of Appeals Decisions Decisions for: 09-17-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 71-15

APPLICANT(S)/OWNER: PETER W. MCSORLEY of Braintree, MA

DEED/CERTIFICATE: Book 4856 / Page 19

SUBJECT PROPERTY: 10 Nantucket Avenue, Falmouth, Massachusetts  
Assessor's Map: Map 46B, Section 18, Parcel 005, Lot 010

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of July 29, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 10 Nantucket Avenue, 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 September 17, 2015.
4. The public hearing was terminated on September 17, 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 Attorney Kevin P. Klauer II, 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)

8/7/2015 E-mail from Attorney Klauer to Zoning Administrator in response to existing building height on subject property - 23'3".

9/17/2015 Letter from Attorney Klauer accompanying four copies of revised "Certified Plot Plan Showing Proposed Dwelling" - (revised for driveway apron).

Letters/Referrals/E-mails from Town Departments

8/31/2015 Referral submitted by Board of Health Agent David Carignan that states: This lot will be served by the Little Pond Sewer Service Area Project. The proposed reconstructed dwelling will have the same number of bedrooms as the existing and, absent any indications the existing septic system is in failure, no objections.

8/18/2015 Referral submitted by the Engineering Department (Scott Schluter) that has standard comments as well as: There is no hard surfaced apron for the existing driveway, we recommend adding at least an apron to the plans.....

8/4/2015 Referral submitted by the Building Commissioner (Eladio Gore) that states: New construction shall conform to all Flood Zone Construction Requirements per MA State Building Code.

8/4/2015 Referral submitted by the Falmouth Fire Rescue Department that stated no issues.

7/31/2015 Referral submitted by Assistant Town Planner that has no comment.

Plans submitted by Applicant/Applicant's Representative

9/17/2015 At the hearing Attorney Klauer submitted "Neighborhood Coverage Calculations for Properties Nearby to 10 Nantucket Avenue".

9/17/2015 "Certified Plot Plan 10 Nantucket Avenue in Falmouth, Massachusetts" prepared for Peter W. McSorley 25 Sherman Road Braintree, MA drawn by Cape & Islands Engineering, stamped and dated by Christopher Costa, RLS on 8/26/2015, with a final revision date of 8/25/2015 and a Board date 'received' stamp of September 17, 2015

7/29/2015 "Existing Floor Plans" – two pages – hand drawn of First and Second Floor Plans with a Board date 'received' stamp of July 29, 2015

7/29/2015 "McSorley Residence 10 Nantucket Ave. Falmouth, MA" architectural plans drawn by Architecture by SPB consisting of Drawing A1 dated 1/6/2015 showing Front, Rear, Right and Left Elevations and Drawing A2 dated 1/6/2015 showing Proposed First and Second Floor Plan and Storage Layout (attic) – both with a Board date 'received' stamp of July 29, 2015

Hearing: 9/17/2015

Attorney Kevin Klauer with Ament Law Firm was present on behalf of the applicant, who was also in attendance, and reviewed the existing site conditions and the proposed raze and reconstruction of the pre-existing nonconforming single-family dwelling on subject property. Attorney Klauer stated that the property consists of 3,717 square feet of Residential C zoned land and that a 1.5 story, four bedroom single-family exists with a nonconforming setback of 4.8' to the front property line off Massachusetts Avenue and a 3.2' setback from the front property line off Nantucket Avenue – both require a 25' setback; and that the lot coverage by structures is nonconforming at 28.9%. He stated that the land is in the AE13 flood zone and that the proposed reconstruction will conform to the flood zone requirements. The proposed dwelling will remain a four-bedroom dwelling that will be 2.5 stories with an overall height of 32'; the mechanicals will be located in the unfinished attic space on the half-floor that will remain unfinished. The front yard setback off Nantucket Avenue will be slightly improved to 5.8' and the setback off of Massachusetts Avenue will remain at 4.8'.

The Board discussed the proposed plans with Attorney Klauer and reviewed the bulk and lot coverage calculations that Attorney Klauer submitted to the Board at the hearing. All concerns and questions were addressed.

Attorney Klauer noted during the hearing process that the shed shown on the plan is not within the structure lot coverage and that the shed will be removed and not replaced.

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

There was no public comment.

Member Foreman made a motion to close the hearing. Member Van Keuren 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 10 Nantucket Avenue contains 3,717 square feet of Residential C zoned land that is not within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the pre-existing nonconforming 1.5 story, four-bedroom single-family dwelling and reconstruct a 2.5 story, four-bedroom single-family dwelling in almost the same footprint. The front yard setbacks to Nantucket Avenue and Massachusetts Avenue are non-conforming pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage by structures is nonconforming, exceeding the 20% maximum allowed by right in a residential zoned district pursuant to Section 240-69 A. of the Code of Falmouth. The subject property is located in an AE13 zone and construction will be required to meet new flood zone regulations.

Section 240-3 C. 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 and reconstruction of the pre-existing nonconforming single-family dwelling on subject property is not substantially more detrimental than what currently exists. The Board further finds that the proposed plan show a slight improvement to the nonconforming front yard setback off Nantucket Avenue from 3.2' to 5.8'. Furthermore, the Board finds that the lot coverage by structures will slightly be improved from 28.9% to 28.5% - with the total lot coverage being in compliance.

The Board finds through testimony by Attorney Klauer that the existing septic system has not been inspected and current septic serves the four-bedroom dwelling existing. The Board further finds through the referral submitted to the file by the Board of Health Agent, that he believes the property will be served by the 'Little Pond Sewer Service Area Project' in the future and that the Board of Health has no objections to the proposed absent any failure of the existing system. Furthermore, the Board finds through testimony by Attorney Klauer, the subject property is not identified on the 'sewer map'. Zoning Administrator Budrow stated that Nantucket Avenue is not on the list of sites she received from the Wastewater Department.

The Board finds that the existing shed on subject property (shown on the plan noted herein) will be removed from the property and not be replaced.

The Board finds through testimony by the applicant's representative that the proposed dwelling plans are in compliance with the new flood zone regulations.

The Board finds that the half-floor shown on Drawing A2 of the architectural plans and noted as 'attic' will remain unfinished and will be used for storage and mechanical utilities. The Board further finds that the bedroom count will not be increased through the proposed reconstruction and that the bedroom count will remain at four bedrooms.

In addition to the above findings, the Board finds that the proposed reconstruction of the single-family dwelling discussed 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 reconstructed single-family dwelling as the plans show that one of the nonconforming setbacks will be slightly improved, as well as the lot coverage by structures.

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 noted as a four bedroom system by the Board of Health

with the caveat that the subject property will be served by the Little Pond Sewer Area Project and barring failure of the existing system, the Board of Health has no objections to the proposed plans.

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 as the Board of Appeals did not receive a referral 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 Foreman 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 Peter W. McSorley (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze the existing 1.5 story, four-bedroom single-family dwelling and reconstruct a 2.5 story, four-bedroom single-family dwelling on subject property known as 10 Nantucket Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Certified Plot Plan 10 Nantucket Avenue in Falmouth, Massachusetts" prepared for Peter W. McSorley 25 Sherman Road Braintree, MA drawn by Cape & Islands Engineering, stamped and dated by Christopher Costa, RLS on 8/26/2015, with a final revision date of 8/25/2015 and a Board date 'received' stamp of September 17, 2015

- "Existing Floor Plans" – two pages – hand drawn of First and Second Floor Plans with a Board date 'received' stamp of July 29, 2015

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2. The space on the half floor shown on Drawing A2 and noted as 'attic' will remain unfinished and used for storage and for mechanical utilities.

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

4. The shed that exists currently on subject will be removed and not replaced.

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: 71-15

Applicant: PETER W. MCSORLEY of Braintree, MA

Subject Property: 10 Nantucket Avenue, Falmouth, Massachusetts  
Map 46B, Section 18, Parcel 005, Lot 010

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.

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Terrence J. Hurrie, 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 71-15 McSorley - Filed w/ TC 9/25/15