

Zoning Board of Appeals Decisions Decisions for: 04-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 028-16

APPLICANT/OWNER(S): 101 FALMOUTH HEIGHTS ROAD NOMINEE TRUST
of Woburn, MA

SUBJECT PROPERTY: 101 Falmouth Heights Road, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 01, Parcel 002, Lot 001

DEED/CERTIFICATE: Book 17206 / Page 98

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 2, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-23 G. (1) and 240-68 D. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling and renovation of the existing 3-car garage on subject property known as 101 Falmouth Heights Road, Falmouth, MA.
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 April 28, 2016.
4. The public hearing was terminated on April 28, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chair, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis sitting as voting member, made a 4 - 1 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 Raul Lizardi-Rivera, PE with Holmes and McGrath, Inc.
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)

3/2/2016 Holmes and McGrath, Inc. submitted to the Board of Appeal, an application on behalf of 101 Falmouth Heights Road Nominee Trust with fee, copies of existing and proposed plans.

Letters/Referrals/E-mails from Town Departments

3/4/2016 Referral submitted to the file by the Planning Department staff with no comment.

3/15/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment.

4/6/2016 Referral submitted to the file by the Engineering Department (S. Schluter) that states: This

application was reviewed only for impacts to public right of ways and public utilities. Falmouth Heights Road is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

4/21/2016 Zoning Board staff submitted a copy of "Order of Conditions" Decision by the Conservation Commission dated 4/21/2016.

Plans submitted by Applicant/Applicant's Representative

3/2/2016 "Plan of Proposed House Reconstruction" prepared for 101 Falmouth Heights Road Nominee Trust For Lot 1, #101 Falmouth Heights Road in Falmouth, MA drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated Feb. 24, 2016, stamped and signed by Joel R. Kubick, PLS with a Board date 'received' stamp of Mar. 2, 2016;

"Maggiore House at Falmouth Harbor Falmouth, MA" drawn by Maggiore Construction Corp. (existing plans) consisting of: Drawing A-1 'First Floor Plan' revision date of 10/12/07; Drawing A-2 'Second Floor Plan' revision date of 10/12/2007; Drawing A-3 'Exterior Elevation' dated 10/12/2007; and Drawing A-4 'Exterior Elevation' dated 10/12/2007 – all with a Board date 'received' stamp of Mar. 2, 2016;

"Maggiore Residence 101 Falmouth Heights Road Falmouth, MA" architectural plans drawn by Yarosh Associates, Inc. (proposed plans) consisting of: Drawing A-1 'Elevations' dated 2-16; Drawing A-2 'Elevations' dated 2-16; Drawing A-3 'Floor Plan' (1st Floor) dated 1-16; Drawing A-4 'Floor Plan' (2nd Floor) dated 1-16; and Sheet No. A-4 'Proposed Foundation Plan' dated 3/2/2016 – all with a Board date 'received' stamp of Mar. 2, 2016.

Hearing:

Mr. Rivera reviewed the existing site conditions and proposed reconstruction plans for the dwelling on subject property. He noted that the existing setback of the existing dwelling to the 3' contour line off the waters of the inner harbor of 48' will remain the same through the reconstruction; the pool structure, which is not being changed or altered remains with a 30' setback to the 3' contour line off the waters of the inner harbor. The existing dwelling has four bedrooms; the proposed dwelling will have five bedrooms. The height of the structure will be slightly increased and is proposed at 34.9'. Mr. Rivera reviewed the existing lot coverage by structures at 26.1% being slightly reduced to 25.6% and total lot coverage being reduced from 30.6% to 29.5%. The three-car garage will be renovated and not part of raze and reconstruction. The pool, dock and steps remain as is.

The Board discussed plans with Mr. Rivera and asked how the lot coverage by structures can be reduce to meet the 25% through raze and reconstruction of the dwelling. Mr. Rivera stated that the applicant does not want to cut back decks or re-design the plans and that the nonconformity was slightly reduced and that all other setbacks [except that at 3' contour line] are in compliance with the bylaws.

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

Member Potamis 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 101 Falmouth Heights Road in Falmouth contains 28,300 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C., 240-23 G. (1) and 240-68 D. of the Code of Falmouth to raze and reconstruct the existing single-family dwelling and renovate existing attached three-car garage on subject property. The

subject property was granted a Special Permit in 1990 (#34-90) to allow an attached two-car garage to have a third bay addition. The dwelling has an existing nonconforming setback to the 3' contour line off the waters of the inner harbor of 48' that requires a 50' setback under Section 240-68 D. of the Code of Falmouth; the pool structure has a nonconforming 30' setback to same 3' contour line. The pool will not be altered and the nonconforming setback will remain the same. The dwelling, through reconstruction, will maintain the same 48' nonconforming setback.

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 reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that there is slight improvement to the nonconforming lot coverage by structures and total lot coverage on subject property; existing nonconforming setbacks will not be increased but be maintained as is. It is noted herein that the dwelling structure has been relocated further away from the 3' contour line, but the proposed deck at the northwest corner of the dwelling will continue to maintain the nonconforming 48' setback. Furthermore, the Board finds that the existing dwelling was built in 1988 and the attached garage in 1990 (no record of when pool was constructed) and having lot coverage by structures at 26.1%. However, in 2003 Town Meeting voted to change lot coverage by right from the 35% to 20%, thus making this property nonconforming in lot coverage.

Section 240-23 G. (1) of the Code of Falmouth requires a special permit granted by the Board of Appeals to allow garage space for more than two cars if the subject property is less than 30,000 square feet in size and if the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure – whichever is less.

The Board finds that the existing attached garage was granted a special permit (#34-90) allowing the existing three-car garage; and that said garage will not be razed through this special permit.

Section 240-68 D. of the Code of Falmouth requires that no principal structures shall be erected less than 50 feet from the waters of Great Harbor, Vineyard Sound and Nantucket Sound and all tidal ponds and tidal rivers off Vineyard Sound and Nantucket Sound shall be determined by the contour line of three-foot elevation based on the National Geodetic Vertical Datum. [Note: New FEMA regulations require elevation basis on North American Vertical Datum.]

The Board finds that the principal structure has a nonconforming setback of 48' to the waters of the inner harbor off Vineyard Sound that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The Board further finds that the dwelling will be moved further away from the nonconforming setback but that the proposed deck of said dwelling will still maintain the 48' setback.

The Board finds that the testimony by the applicant's representative was that the existing septic system will remain and service the reconstructed dwelling. The Board further finds that testimony was given by applicant's representative that there would be no increase in the number of bedrooms as the septic system will not allow for additional bedrooms. The existing plans for the dwelling shows four bedrooms; the proposed plans show five bedrooms. The Board voted no increase in the number of bedrooms – count to remain four (4) through this approval. The Board of Health did not submit a referral or comment on the proposed plans and therefore the Board is unaware if a fifth bedroom would be approved; and further there was no discussion by the applicant's representative that a 'formula' was reviewed to allow a fifth bedroom.

In addition to the above findings, the Board finds that the proposed 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 raze and reconstruction of the pre-existing nonconforming dwelling as the one nonconforming setback to the 3' contour line will remain at 48' through a proposed deck – the dwelling has been relocated further from the 3' contour line. Also shown is a small reduction in the lot coverage, but is still nonconforming exceeding the 25% allowance under Section 240-69 E. of the Code o Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will maintain a single-family use through this 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 at this time; 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 as four bedroom system according to testimony by the applicant's representative at the hearing (no referral from the Board of Health submitted to file).
- 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 any update to water service.
- 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.

The Board of Appeals has weighed the effects of the proposed raze and reconstruction of the single-family dwelling on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Potamis made a motion to Grant the Special Permit with conditions. Member Murphy seconded the motion. Motion carried 4 – 1 with Member Foreman 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 – 1 to Grant the Special Permit to 101 Falmouth Heights Road Nominee Trust (herein referred to as Applicant) under Section(s) 240-3 C., 240-23 G. (1) and 240-68 D. of the Code of Falmouth to allow the raze and reconstruction of the pre-existing nonconforming single-family dwelling and renovations to the existing three-car garage on subject property known as 101 Falmouth Heights Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the single-family dwelling, renovation of the three-car garage, setbacks, dwelling height and lot coverage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Proposed House Reconstruction" prepared for 101 Falmouth Heights Road Nominee Trust For Lot 1, #101 Falmouth Heights Road in Falmouth, MA drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated Feb. 24, 2016, stamped and signed by Joel R. Kubick, PLS with a Board date 'received' stamp of Mar. 2, 2016;

- "Maggiore House at Falmouth Harbor Falmouth, MA" drawn by Maggiore Construction Corp. (existing plans) consisting of: Drawing A-1 'First Floor Plan' revision date of 10/12/07; Drawing A-2 'Second Floor Plan' revision date of 10/12/2007; Drawing A-3 'Exterior Elevation' dated 10/12/2007; and Drawing A-4 'Exterior Elevation' dated 10/12/2007 – all with a Board date 'received' stamp of Mar. 2, 2016;

- "Maggiore Residence 101 Falmouth Heights Road Falmouth, MA" architectural plans drawn by Yarosh Associates, Inc. (proposed plans) consisting of: Drawing A-1 'Elevations' dated 2-16; Drawing A-2 'Elevations' dated 2-16; Drawing A-3 'Floor Plan' (1st Floor) dated 1-16; and Sheet No. A-4 'Proposed Foundation Plan' dated 3/2/2016 – all with a Board date 'received' stamp of Mar. 2, 2016.

2. Architectural plan Drawing A-4 'Floor Plan' (2nd Floor) dated 1-16 shall be revised eliminating a bedroom so that the total number of bedrooms on subject property does not exceed four [as existing] as stated by applicant's representative at the hearing. The revised Drawing A-4, along with A3 (showing first floor plan) shall be submitted to the Board and approved, prior to issuance of a building permit. In the event the Board of Health, based on the total room formula and septic design, has no issue with the fifth bedroom and approves it, the applicant shall submit written verification from the Board of Health to the

Board of Appeals that a fifth bedroom is allowed as proposed and Drawing A-4 'Floor Plan (2nd Floor) as drawn with a Board date 'received' stamp of 3/2/2016 will be approved herein.

3. The Board of Appeals herein adopts the 'Order of Conditions' dated 4/21/2016 issued by the Conservation Commission.

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: 028-16

Applicant: 101 FALMOUTH HEIGHTS ROAD NOMINEE TRUST of Woburn, MA

Subject Property: 101 Falmouth Heights Road, Falmouth, Massachusetts
Map 46B, Section 01, 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 represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, Board of Appeals

_____ 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 028-16 101 Falmouth Heights Rd. Nom. TR / filed w/ Town Clerk 5/10/16