

Zoning Board of Appeals Decisions Decisions for: 08-11-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 076-16

APPLICANT/OWNER: HAROLD E. DEWSNAP and HEATHER PATTERSON BURKE
of Grafton, MA

SUBJECT PROPERTY: 207 Grand Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 026, Parcel 013, Lot 089

DEED/CERTIFICATE: Book 28994 / Page 270

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 11, 2016, 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 construct small additions to first and second floor, while renovating the pre-existing nonconforming single-family dwelling on subject property known as 207 Grand Avenue, 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 August 11, 2016.
4. The public hearing was terminated on August 11, 2016, 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 Michael Borselli, P.E. with Falmouth Engineering, Inc. 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)

None

Letters/Referrals/E-mails from Town Departments

7/12/2016 Board of Appeals staff submitted to the file copies of previous Special Permit #27-82, #89-85, #51-86 and #10-91 granted for subject property.

7/12/2016 Referral submitted to the file by the Planning Department staff that has no comment.

7/12/2016 Referral submitted to the file by the Town Assessor that has no comment.

7/12/2016 Referral submitted to the file by the Conservation Agent that stated: Pending RDA for 7/13/16, continued to 7/20/16.

7/19/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

Plans submitted by Applicant/Applicant's Representative

"Plot Plan for #207 Grand Avenue" prepared for Heather Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. dated June 22, 2016 – Sheet 1 of 1, stamped, signed and dated by Gary S. Labrie, PLS on 7/11/16 and with a Board date 'received' stamp of July 11, 2016; and

"Dewsnap/Burke House Remodel 207 Grand Avenue Falmouth, MA" architectural plans drawn by Denise D'Ambrosi Bonoli, AIA consisting of 11 pages showing existing and proposed floor plans and elevations – not dated – with a Board date 'received' stamp of July 11, 2016.

Hearing:

Michael Borselli reviewed the existing site conditions and the proposed plans to add an addition at the east side of the existing dwelling, remove a deck and construct an addition and covered porch at the west side of the dwelling, construct a new bulk head at the rear of the dwelling while renovating the interior of the dwelling on subject property. He explained the structure was previously a twelve bedroom Bed and Breakfast; the interior renovations will create a five-bedroom single-family dwelling. The driveway to subject property is off Dartmouth Avenue. The property is on Town sewer. The patio proposed on the northwest corner of the structure will be pervious pavers. The lot coverage by structures and by structures, parking and paving well exceed the current day requirements of 20% by structures and 40% by structures, parking and paving, however the proposed changes to the site and structure will decrease the lot coverage by structures from 34.8% to 34.7% and the total coverage from 49.7% to 49.6%. Mr. Borselli stated that there are no new nonconformities and no increase to the existing nonconformities. The garage at the rear of the property will not be changed through this proposal.

The Board discussed plans with Mr. Borselli, including any changes to the garage and what the use of basement will be. All concerns and questions were addressed.

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

Francis Walker of 205 Grand Avenue (immediate abutter) asked questions regarding any changes to the east side of the lot that abuts him.

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 207 Grand Avenue in Falmouth contains 6,504 square feet of Residential C zoned land that is not located in any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct small additions to the pre-existing nonconforming single-family dwelling on subject property. There have been previous Special Permits allowing small additions throughout the years as follows: Special Permit #27-82 allowed an addition to enlarge kitchen; Special Permit #89-85 allowed reconstruction of garage (slightly increased); Appeal #51-86 was an appeal of the Building Commissioner regarding a possible violation of Special Permit #89-85 – overturned; Special Permit #66-90 requested to expand third floor [attic space] including a dormer to allow for living quarters for property owners as main area was used as an Inn.; and Appeal #10-91 was a remand to the ZBA [after appeal to Superior Court] to re-hear Special Permit #66-90 – Board granted. The property, according to the applicant's representative is currently used as a single-family dwelling. The existing dwelling structure has a nonconforming setback to the front property line of 0.0' at the southwest corner of the property that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; the

dwelling structure has nonconforming setbacks to both the easterly and westerly side yard property lines of less than 10' which is the required setback under Section 240-68 B. of the Code of Falmouth; and lot coverage by structures and by structures parking and paving exceed the 20% maximum allowed by structures and the 40% maximum allowed by structures, parking and paving in Section 240-69 A. of the Code of Falmouth. The proposed additions are small in nature and do not increase the existing nonconforming setbacks of the existing dwelling structure. No nonconforming setbacks are improved through this special permit request. However, the lot coverage will be slightly improved through the proposed additions and removal of existing decks and steps on the east and west façade of the dwelling structure.

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 change to the pre-existing nonconforming dwelling structure will not be substantially more detrimental than what currently exists. The Board further finds that the applicant is proposing to decrease the bedroom count within the dwelling from twelve bedrooms to five bedrooms, thereby creating less impact to the property and less traffic impact to site and neighborhood. Furthermore, the Board finds that the setback to the easterly side property line will be improved from 1.7' to 2' making the setback slightly less nonconforming.

The Board finds that the basement will be renovated and used for storage use. The Board further finds that a new bulkhead will be constructed at the rear of the structure for exterior access to basement area.

The Board finds that there will be no change in the height of the dwelling structure. The Board further finds that there will be a minimal decrease in the pre-existing nonconforming lot coverage percentages on subject property due to the removal of decks and steps on both sides of the dwelling. Furthermore, the Board finds that there will be no change in the nonconforming garage structure at the rear of the property.

In addition to the above findings, the Board finds that the proposed additions and renovations to the existing dwelling structure on subject property 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 minor additions to the existing dwelling as there will be no increase in the existing nonconforming setbacks; there will be a less nonconforming setback on the east side of the structure; and lot coverage percentages will be minimally decreased.
- B. The site is suitable for the proposed use as the property is zoned residential and will be used as a single-family five-bedroom dwelling.
- C. There will be no impact on traffic flow and safety as there will be a decrease in the bedroom count going from twelve bedrooms to five bedrooms; and there will be no change to the existing driveway to the property from Dartmouth Avenue.
- 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 is no change in the height or width of the dwelling structure; and there will be no impact on any view or vista from the roadway or abutting properties.
- E. The subject property is serviced by the Town sewer system.
- 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.
- G. The proposed changes to the dwelling 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 additions and renovations to 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 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 Harold E. Dewsnap and Heather Patterson Burke (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct small additions to the first and second floor while renovating the pre-existing nonconforming single-family dwelling on subject property known as 207 Grand Avenue in Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The removal of decks and steps, small additions to the dwelling, bulkhead addition and renovations reducing the bedroom count from 12 to 5 bedrooms and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #207 Grand Avenue" prepared for Heather Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. dated June 22, 2016 – Sheet 1 of 1, stamped, signed and dated by Gary S. Labrie, PLS on 7/11/16 and with a Board date 'received' stamp of July 11, 2016; and

- "Dewsnap/Burke House Remodel 207 Grand Avenue Falmouth, MA" architectural plans drawn by Denise D'Ambrosi Bonoli, AIA consisting of 11 pages showing existing and proposed floor plans and elevations – not dated – with a Board date 'received' stamp of July 11, 2016

2. There shall be no bedrooms or sleeping accommodations allowed or created within the basement area of the single-family dwelling on subject property.

3. 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.

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

5. 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.)

6. 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: 076-16

Applicant: Harold E. Dewsnap and Heather Patterson Burke

Subject Property: 207 Grand Avenue, Falmouth, Massachusetts
Map 46B, Section 26, Parcel 013, Lot 089

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.

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 076-16 Dewsnap / Burke/filed with the TC 8/18/16