

Zoning Board of Appeals Decisions Decisions for: 02-18-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 002-16

APPLICANT/OWNER(S): JOHN W. FRIEL & SUSAN M. FRIEL of West Roxbury, MA

SUBJECT PROPERTY: 31 Central Park Court, Falmouth, MA
Assessor's Map: Map 46B, Section 13, Parcel 023, Lot 022

DEED/CERTIFICATE: Map 8644 / Page 99

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 6, 2016, 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 raze a one-story pre-existing nonconforming single-family dwelling and reconstruct a two-story less nonconforming single-family dwelling on subject property known as 31 Central Park Court, 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 February 18, 2016.
4. The public hearing was terminated on February 18, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool (sitting as voting member) 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 Mark Bogosian of Longfellow Design Build, 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)

From February 10, 2016 thru February 12, 2016 e-mails between the Board staff and applicant's representative were submitted to the file (regarding information required).

2/18/2016 Revised Bulk coverage calculations for proposed dwelling reconstruction was submitted at the hearing by the applicant's representative Mark Bogosian. (Originally submitted 2/17/2016).

1/6/2016 Applicant's Representative submitted a photo of the existing dwelling with a height of said structure shown as 18'.

Letters/Referrals/E-mails from Town Departments

2/9/2016 Referral submitted by the Engineering Department (S. Schluter) that states: This application

was reviewed only for impacts to public right of ways and public utilities. Central Part Court 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.

1/19/2016 Referral submitted to file by Building Commissioner Gore that states: Not in a regulated flood zone no issue.

1/15/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

1/8/2016 Referral submitted to the file by the Marine Environmental Services with no comment.

1/6/2016 Referral submitted to the file by the Planning Department staff with no comment.

Plans submitted by Applicant/Applicant's Representative

1/6/2016 "Certified Plot Plan 31 Central Park Court in Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 11/16/2015, stamped, signed and dated by Christopher Costa, RLS and with a Board date 'received' stamp of January 6, 2016;

"Proposed Residence at 31 Central Park Court Falmouth, MA" prepared for Longfellow Design Build by Mark S. McCarthy Boston dated December 16, 2015 consisting of Drawing EX-1 'Floor Plan', 2nd page is 'Ground Floor', 3rd Page is 'Second Floor', Drawing A4 'Front Elevation' dated October 2015, Drawing A5 'Exterior Elevations' dated December 16, 2015 – all had a Board date 'received' stamp of January 6, 2016

Hearing:

Mark Bogosian reviewed the existing site conditions and stated that the dwelling has an existing nonconforming setback to the front property line of 19.2' that requires a 25' setback and that the lot coverage by structures on site is nonconforming at 26.3% wherein up to 25% is allowed by special permit.

Mr. Bogosian explained that the dwelling will be demolished and the foundation will be maintained and new dwelling constructed on existing foundation. The existing dwelling structure is a one-story with three bedrooms and the proposed is a two-story with three bedrooms. He reviewed the interior of the dwelling explaining the master bedroom downstairs for handicap accessibility and a second master on the second floor, with a family room space at the top and left of stairs that is open to stairway and has no doors for privacy. The shed at the northeast corner of the parcel will be removed and not replaced. He reviewed the lot coverage being improved slightly from 26.3% to 25.6% (by structures); noting that the handicap ramp that will be mobile, is not included in the lot coverage.

Chairman Bielan questioned Mr. Bogosian about the plans and how the proposed structure appears to be within the foundation and not 'on' the foundation. Mr. Bogosian stated that the foundation may then have to be removed and new foundation poured in order to keep the setbacks proposed.

The Board discussed the proposed plans, handicap ramp and landing the ramp is attached to, front porch size and possible reduction, stormwater runoff, number of bedrooms and second floor family room. Mr. Bogosian stated that the bedroom count remains the same at three bedrooms; he stated that there has not been any issue with stormwater runoff on site; will work to reduce lot coverage to 25% through possibly recessing stairs at front porch and reduce length of porch.

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

Board discussed proposed plan, review and testimony.

Member Murphy 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 31 Central Park Court contains 5,622 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze the existing one-story and construct a two-story dwelling. The dwelling is pre-existing nonconforming and has a nonconforming setback of 19.2' to the front property line off Central Park Court that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth, as well as an existing shed in the northeast corner of the lot that does not meet the 3' setback to the northerly side yard property line. The lot coverage by structures existing is also nonconforming with a 26.3% lot coverage which exceeds the 20% by right maximum under Section 240-69 A. of the Code of Falmouth and 25% which may be allowed by special permit under Section 240-69 E. of the Code of Falmouth. The applicant is proposing to raze the existing one-story three bedroom and construct a two-story three-bedroom dwelling that is proposed to slightly decrease the lot coverage by structures to 25.6%. The proposed handicap ramp at the southeast corner of the dwelling, according to testimony by the applicant's representative will be removable; however, the landing with steps to ground level giving access to the rear entrance of the structure will not be removable as building code requires it to be constructed to code as an egress. Testimony by the applicant's representative at the hearing was that the intent was to use the existing foundation to build the new dwelling upon, but the Board noted that the proposed dwelling location did not match up with the existing foundation so the representative stated that the foundation too will be reconstructed. The setback to the front property line will be improved from 19.2' to 22.2'.

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 razing of the one-story dwelling and the construction of a two-story dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed dwelling will have an improved front yard setback. Furthermore, the Board finds that the shed in the northeasterly corner of the lot will be removed and not replaced and will allow the lot coverage by structures to be improved from 26.3% to 25.6%.

The Board finds that the applicant is amenable to reducing the lot coverage by structures to 25% or less and will reconfigure and cutback the front porch in order to reduce the lot coverage. The Board further finds given the testimony by the applicant's representative that the handicap ramp will not be included in the lot coverage by structures as it will be removed when there is no need for said ramp; however the deck landing and steps to grade that the ramp will attach to shall be included in the lot coverage until such time that said deck and steps are removed [applicant's representative stated that the deck landing and steps may be removed when the ramp is removed and new steps from door will be constructed to grade].

The Board finds that the "Certified Plot Plan" submitted to the file for the proposed reconstruction of the single-family dwelling shows that the proposed dwelling is within the foundation – not proposed 'on' the foundation and therefore setbacks may need to be recertified. The Board further finds through review of the proposed "Certified Plot Plan" and discussion with applicant's representative the foundation that was proposed to be used in the proposed reconstruction will now be a new poured foundation to insure setback as shown on plan. Furthermore, the Board finds that a condition will be made herein to have applicant submit a revised plot plan showing accurate footprint, setbacks and lot coverage pursuant to testimony given at the hearing.

The Board finds through testimony by the applicant's representative that the basement space for the new dwelling will be unfinished and used for storage. The Board further finds that the applicant will submit a basement plan to the Board of Appeals prior to issuance of a building permit.

The Board finds based on the calculations submitted by the applicant's representative, the proposed reconstructed dwelling is in keeping with the neighborhood's character and lot coverage. The Board further finds that the reconstructed dwelling will be an enhancement to the resident's utilization of the dwelling.

In addition to the above findings, the Board finds that the proposed reconstructed 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 raze and reconstruction of the single-family dwelling on subject property as the nonconforming setback to the front property line will be improved and the nonconforming lot coverage by structures will be improved.
- 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 other dwellings 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 a three bedroom system according to testimony by the applicant and will require sign off by the Board of Health prior to issuance of a building permit.
- 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 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 Hurrie 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 John W. Friel and Susan M. Friel (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 31 Central Park Court, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the existing single-family dwelling and its use shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Proposed Residence at 31 Central Park Court Falmouth, MA" prepared for Longfellow Design Build by Mark S. McCarthy Boston dated December 16, 2015 consisting of Drawing EX-1 'Floor Plan', 2nd page is 'Ground Floor', 3rd Page is 'Second Floor', Drawing A4 'Front Elevation' dated October 2015, Drawing A5 'Exterior Elevations' dated December 16, 2015 – all had a Board date 'received' stamp of January 6, 2016

2. The plan submitted and reviewed by the Board entitled "Certified Plot Plan 31 Central Park Court in Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 11/16/2015, stamped, signed and dated by Christopher Costa, RLS and with a Board date 'received' stamp of January 6, 2016, shall be revised showing the accurate location of the dwelling, setbacks, proposed drywells and lot coverage at 25% or less. The revised "Plot Plan" shall be submitted to the Board of Appeals for approval prior to issuance of a building permit. As discussed during the hearing lot coverage did include handicap ramp. The landing and steps shall be calculated in the lot coverage by structures, but not the actual ramp. The plan shall also show reduction in size and reconfiguration of the front porch in order to reduce lot coverage by structures to be no more than 25% and location of dry wells proposed. This revision shall take into consideration the possible removal and re-pouring of a foundation.

3. The applicant's representative shall submit to the Board of Appeals, prior to issuance of a building permit, revision of the second floor plan showing the wall length into the family room area at the closet being reduced to just where the closet starts.

- 4. The applicant’s representative shall submit to the Board of Appeals, prior to issuance of a building permit, the actual basement plan for the proposed dwelling reconstruction and note its use on said plan.
- 5. The applicant shall submit to the Board of Appeals, prior to the final sign off by building and Zoning Administrator, an ‘as-built’ plan all decks, porches with steps, handicap ramp and elimination of shed for accurate lot coverage verification [25% or less – see Condition 2 above] and setback verifications.
- 6. There shall only be three bedrooms allowed on subject property.
- 7. The shed existing on subject property shall be removed and not replaced as shown on the plans submitted and pursuant to testimony by the applicant’s representative at the hearing.
- 8. 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.
- 9. The Applicant shall meet the requirements of the DPW Water Division.
- 10. 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.)
- 11. 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: 002-16

Applicant: JOHN W. FRIEL & SUSAN M. FRIEL of West Roxbury, MA

Subject Property: 31 Central Park Court, Falmouth, Massachusetts
Map 46B, Section 13, Parcel 023, Lot 022

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 002-16 /Friel / Filed w/ Town Clerk 3/2/16