

Zoning Board of Appeals Decisions Decisions for: 01-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 127-15

APPLICANT/OWNER(S): MARC W. COMSTOCK & MARGARET A. FITZGERALD
Of North Andover, MA

SUBJECT PROPERTY: 16 Nantucket Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 18, parcel 004, Lot 009

DEED/CERTIFICATE: Book 28981 / Page 085

SUMMARY: Board Granted (4 – 1) with Conditions

PROCEDURAL HISTORY

1. Under a date of December 11, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 16 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 January 28, 2016.
4. The public hearing was terminated on January 28, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy voted on the application. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Thomas J. Bunker, PLS of BSS Design, 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.

Letters/E-mails from Abutters/Interested Parties

None

Letters/E-mails/Information from Applicant/Representative(s)

The file contains e-mails from the ZBA staff to Mr. Bunker (applicant's representative) regarding information on plans.

1/21/2016 Thomas Bunker of BSS Design, Inc. [representative] submitted "Abutting Lot Coverage Computation for 16 Nantucket Avenue, Falmouth Sorted by Bulk" for the Board's review under Section 240-69 E. of the Code of Falmouth.

Letters/Referrals/E-mails from Town Departments

12/14/2015 Referral submitted to the file from the Planning Department staff with no comment.

12/15/2015 Referral submitted to the file from Falmouth Fire Rescue with no comment.

12/15/2015 Referral submitted to the file from Water Superintendent Rafferty with no comment.

12/15/2015 Referral submitted to the file from Building Commissioner Gore that states: Shall comply with Flood Zone requirements. Lowest floor shall be at or above base flood elevation.

12/18/2015 Referral submitted to the file from Conservation Agent Kasprzyk states: Approved under an RDA on 11/4/15. Drywells were proposed for house and driveway size reduced – stormwater addressed for property.

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

1/8/2016 Referral submitted to the file from the Engineering Department (S. Schluter) that states: This application was reviewed only for impacts to public right of ways and public utilities. Nantucket Ave and Pennsylvania Ave are both Public right of ways in this area. No alterations are proposed to either 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.

1/15/2016 Referral submitted to the file by Health Agent Carignan that states: The Board of Health did, in fact, grant relief to the owners of this property to allow a reduction of the foundation to septic system components in a 2003 decision (attached), but conditioned their approval on the existing two-bedroom dwelling retaining two bedrooms. The plans provided for the file indicate two bedrooms and a loft area. The Health Department regards this loft as suitable for use as a third bedroom so cannot comment favorably on this application. If the applicant would like the Health Department decision on this matter to be reviewed and decided by the Board of Health, they can schedule a hearing.

Plans submitted by Applicant/Applicant's Representative

1/21/2016 "Plot Plan House Reconstruction" prepared for Marc Comstock 16 Nantucket Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc., stamped and signed by Thomas Jackson Bunker, PLS and dated September 29, 2015 with a final revision date of January 21, 2016 and with a Board date 'received' stamp of January 21, 2016;

Architectural plans drawn by Thomas A. Moore Design Co. - 'Existing Conditions for C&J Hunt Builders' consisting of Drawing EX1 through EX4 dated 8/18/2015 with a Board date 'received' stamp of January 12, 2016;

Architectural plans drawn by Thomas A. Moore Design Co. - 'Reconstruction For: C&J Hunt Builders' consisting of Drawing A1 through A3 (floor plans) dated 1/6/2015 with a Board date 'received' stamp of January 21, 2016;and

Architectural plans drawn by Thomas A. Moore Design Co. - 'Reconstruction For: C&J Hunt Builders' consisting of Drawing A4 through A7 (elevation plans) dated 1/19/2016 with a Board date 'received' stamp of January 21, 2016.

Hearing:

Mr. Bunker stated that he is back before the Board with a revised plan for the razing and reconstruction of the pre-existing nonconforming one-story, two-bedroom single-family dwelling on subject property. He reviewed the existing site conditions and the proposed razing of the existing one-story, two-bedroom single-family dwelling and the construction of the proposed 2.5 story, two-bedroom dwelling with slightly improved nonconforming setbacks and lot coverage. Mr. Bunker noted the Variance for the subject property as granted by the Board of Health on December 15, 20103 that limits the property to two bedrooms as noted in the Variance approval as #2.

The height of the proposed 2.5 story dwelling will be 29.8' from the top of foundation to the roof of proposed dwelling and 31.4' as measured from mean grade. Mr. Bunker explained that the proposed plans meet the flood zone regulations. The half floor (top floor) shown as 'loft' on the Drawing A3 of

architectural plans is open to the floor below, has a powder room, laundry room and will be used as a TV/family room. He noted the storage area that will be unfinished and the deck off the TV/family room that allows for a view to the water.

The Board discussed the proposed plans with Mr. Bunker who addressed their concerns and questions.

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

Board discussed: Consensus by the majority of the Board was that the applicant had listened to the Board's concerns and revised plans that show improvement in bulk, lot coverage and reduced height of the proposed dwelling; and the issues of razing and reconstructing to meet flood zone regulations.

Member Van Keuren made a motion to close the hearing. Member Murphy 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 16 Nantucket Avenue in Falmouth contains 3,766 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling is on the corner of Nantucket Avenue and Pennsylvania Avenue and therefore has two front yards. The dwelling has a nonconforming setback of 14.5' to Pennsylvania Avenue and 10.2' to Nantucket Avenue - both require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and a nonconforming setback to the northerly side yard property line of 3.9' that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures at 24.56% on subject property exceeds the 20% maximum allowed set forth in Section 240-69 A. of the Code of Falmouth for a residential zoned property. The property is located in the AE13 flood zone and therefore, through the razing and reconstruction, the dwelling will have to comply with flood zone regulations.

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 raze and reconstruction of the existing single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that one nonconforming setback (northwest corner of dwelling) and the lot coverage are slightly improved in the revised plans submitted and there are no new nonconformities created. Furthermore, the Board finds that the existing footprint is substantially the same as the proposed footprint with a slight reconfiguration to reduce a nonconforming setback.

The Board finds that the existing one-story dwelling has approximately 864 square feet of space and the proposed 2.5 story dwelling has approximately 2,070 square feet of space. The Board further finds that the height of the proposed dwelling shall be 31.4' which is below the maximum height allowed pursuant to Section 240-70 of the Code of Falmouth "Maximum building height" that requires that the maximum building height for principal structure is 2 ½ stories and shall not exceed 35' in height.

Section 240-69 A. of the Code of Falmouth - "Maximum lot coverage" requires that a Residence C zoned district shall be limited to 20% lot coverage by structures and 40% by structures, parking and paving.

The Board finds that the lot coverage by structures on subject property is currently nonconforming at 24.56%. The Board further finds that through the reconstruction of the single-family dwelling on subject property the lot coverage by structures will be slightly reduced to 24.24%. Furthermore, the Board finds that the total lot coverage is below the 40% maximum allowed under Section 240-69 A. of the Code of Falmouth, thus in compliance.

The Board finds that the proposed dwelling will be constructed slab on grade and will not have any below grade storage area. The Board further finds that the storage area on the second floor is appropriate for resident's use.

The Board of Health had limited the bedroom count to two bedrooms in a previous Variance granted by the Board of Health in 2003 (see copy of Variance submitted to the file). The Board further finds that the applicant will be required to get approval by the Board of Health prior to issuance of a building permit. Furthermore, the Board feels that a deed restriction limiting the subject property to two bedrooms is appropriate and shall herein incorporate a condition as such.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the single-family 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 reconstructed dwelling that will have slightly improved nonconforming setbacks and lot coverage.
- B. The site is suitable for the proposed use as the property is zoned residential and has an existing single-family dwelling that will continue its use as such.
- 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 has been verified by the Board of Health as a two bedroom system.
- F. There are adequate utilities to subject property by virtue of an existing dwelling 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 Foreman made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion. The motion carried with a 4 – 1 vote – Member Bielan is 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 a Special Permit to Marc C. Comstock and Margaret A. Fitzgerald (herein referred to as Applicant) under Section(s) 240-3 and 240-69 of the Code of Falmouth to raze the pre-existing nonconforming one-story, two-bedroom single-family dwelling and construct a less nonconforming 2.5 story, two-bedroom single-family dwelling on subject property known as 16 Nantucket Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the dwelling, location on site of dwelling, setbacks, lot coverage and height of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan House Reconstruction" prepared for Marc Comstock 16 Nantucket Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc., stamped and signed by Thomas Jackson Bunker, PLS and dated September 29, 2015 with a final revision date of January 21, 2016 and with a Board date 'received' stamp of January 21, 2016;
- Architectural plans drawn by Thomas A. Moore Design Co. - 'Existing Conditions for C&J Hunt Builders' consisting of Drawing EX1 through EX4 dated 8/18/2015 with a Board date 'received' stamp of January 12, 2016;
- Architectural plans drawn by Thomas A. Moore Design Co. - 'Reconstruction For: C&J Hunt Builders'

consisting of Drawing A1 through A3 (floor plans) dated 1/6/2015 with a Board date 'received' stamp of January 21, 2016;and

- Architectural plans drawn by Thomas A. Moore Design Co. - 'Reconstruction For: C&J Hunt Builders' consisting of Drawing A4 through A7 (elevation plans) dated 1/19/2016 with a Board date 'received' stamp of January 21, 2016.

2. There shall be no more than two (2) bedrooms allowed on subject property.

3. There shall be no accessory structures of any size allowed on subject property without prior approval by the Board of Appeals.

4. The applicant shall be responsible to submit to the Board of Appeals, an 'as-built' plan of the structures, landings and steps verifying the setbacks and lot coverage approved herein. The 'as-built' shall be submitted to the Board of Appeals prior to the final sign off by the Building Inspector and Zoning Administrator.

5. The applicant is herein required to draft a restrictive covenant that limits the subject property to two (2) bedrooms. The draft shall be submitted to the Board of Appeals for review by its counsel; the finished document shall be signed by the Town, the applicant will then file the document with the Barnstable Registry of Deeds and forward a copy of said filing with the Registry to the Board of Appeals forthwith.

6. 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.

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

8. 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.)

9. 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.

Special Permit Number: 127-15

Applicant: MARC W. COMSTOCK & MARGARET A. FITZGERALD of No. Andover, MA

Subject Property: 16 Nantucket Avenue, Falmouth, MA
Map 46B, Section 18, Parcel 004, Lot 009

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

_____ 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 127-15 Comstock / Fitzgerald filed w/ TC 2/5/16