

## Zoning Board of Appeals Decisions Decisions for: 11-17-2016

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FALMOUTH ZONING BOARD OF APPEALS  
FINDINGS AND DECISION

SPECIAL PERMIT NO: 104-16

APPLICANT/OWNER: JANICE S. CROWLEY, TRUSTEE of Janice S. Crowley Realty  
Trust of Marlborough, MA

SUBJECT PROPERTY: 18 Abbies Lane, North Falmouth, Massachusetts  
Assessor's Map: Map 02A, Section 11, Parcel 021A, Lot 000A

DEED/CERTIFICATE: Book 27960 / Page 243

SUMMARY: Special Permit Granted with Conditions

### PROCEDURAL HISTORY

1. Under a date of October 4, 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 raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 18 Abbies Lane, North 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 November 17, 2016.
4. The public hearing was terminated on November 17, 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 Attorney Robert H. Ament with Ament Law Firm, 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

11/08/2016 Letter of support submitted to the file dated November 1, 2016 signed by Ronald C. Martin of 25 Abbies Lane

10/14/2016 Letter of support submitted to the file dated November 9, 2016 signed by Elizabeth Martin Fideli of 19 Abbies Lane

11/17/2016 E-mail from Virginia Valiela of North Falmouth to Zoning Administrator for Board members review stating opposition to the proposed project due to possible nitrogen loading to Megansett Harbor

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

10/21/2016 Attorney Ament submitted a letter dated October 20, 2016 to Zoning Administrator with letter attached from Attorney Ament to Rod Palmer, Building Commissioner regarding designation of a front yard for subject property - Abbies Lane was designated by the Commissioner.

11/17/2016 Attorney Ament handed in photos of rooms in existing dwelling explaining issues relative to beams, footings, mechanical system, etc. to substantiate demolition of existing dwelling

11/17/2016 Attorney Ament submitted a copy of a Restrictive Covenant on different property and draft covenant for subject property (single-family use)

11/17/2016 Attorney Ament submitted a copy of a permit for a new Septic System for subject property (no gpd flow info given)

11/17/2016 Attorney Ament submitted a copy of a letter from Warwick & Associates, Inc.

#### Letters/Referrals/E-mails from Town Departments

10/04/2016 Attorney Ament submitted a letter dated July 15, 2016 from the Historical Commission regarding 'Review of Demolition' to Rod Palmer, Building Commissioner – Historical Commission voted to issue a waiver of the six (6) month delay to allow for demolition of subject property.

10/05/2016 Referral submitted to the file by the Planning Department staff with no comments

10/05/2016 Referral submitted to the file by the Director of Assessing with no comments

10/06/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comments

10/11/2016 Referral submitted to the file from the Marine Environmental Services with no comment

10/11/2016 Referral submitted to the file from the Historical Commission with attached copy of approval for waiver of six month demolition delay – letter dated July 15, 2016

10/27/2016 E-mail from Zoning Administrator to Attorney Ament regarding kitchenette in basement shown on proposed plans – need clarification

10/31/2016 Referral submitted to the file from Conservation Commission with comment: Filed a Notice of Intent application on property; scheduled for 11/2/16

11/07/2016 Referral submitted to the file from Engineering Department with standard comment regarding alteration or change to public utilities require permission from appropriate Town Department and that Abbies Lane is a public right of way

#### Plans submitted by Applicant/Applicant's Representative

"Crowley Residence – 18 Abbies Lane" – Existing plans consisting of computer generated floor plans (3 floors and basement) and four pages of elevations – all with a Board date 'received' stamp of October 4, 2016;

"Plot Plan" for Halliday Builders 18 Abbies Lane North Falmouth, MA as drawn by Warwick & Associates Inc. dated 9/28/2016 – stamped, signed and dated by Gary S. Labrie, PLS on 9/29/2016 with a Board date 'received' stamp of October 4, 2016;

"New Residence for Andy Crowley 18 Abbies Lane Falmouth, MA" as drawn by William F. Lee, II, AIA consisting of Drawing Number 1 dated 8-09-16, Drawing 2, 3 and 4 dated 7-14-16 and Drawing 5 and 6 dated 7-27-16 – all stamped, signed and dated by William F. Lee, II, RA on 8/15/2016 and all with a Board date 'received' stamp of October 4, 2016; and

"Concept Plan Crowley Residence 18 Abbies Lane North Falmouth, MA" drawn by Sudbury Design Group – not dated – with a Board date 'received' stamp of October 4, 2016.

#### Hearing:

Attorney Robert Ament reviewed the existing site conditions and noted that the existing dwelling is circa 1920 and that it was an Inn with three stories and 15 rooms – it currently utilizes 11 bedrooms but only 9 qualify as bedrooms to today's standards. After inspection of the existing dwelling it was found that the foundation is inadequate to renovate, there are cracks in the slabs, mildew in basement, walls and floors are out of plumb, beams, columns, footings, point loads show signs of failure and there are undersized

framing members for the structural integrity of the building. Attorney Ament stated that the Historical Commission approved a waiver of the six month delay to allow for the immediate demolition of the existing dwelling on subject property. The applicant is proposing to reconstruct a two and one-half story dwelling with seven bedrooms. The existing dwelling has nonconforming setbacks to both front yards – one off Abbies Lane and one off Teele Street. The Building Commissioner designated Abbies Road to be the front yard and Teele Street will be a side yard designation; the setbacks to both side yard property lines will be conforming with a 10'+ setback, the setback from the dwelling to the front yard property line off Abbies Lane will have an improved setback from 17' to 23.9'. The height of the existing dwelling has a nonconforming height of 37.2', the proposed dwelling will be slightly improved with a height of 36.97'. Lot coverage will be maintained below the maximum percentage allowed according to Town Code. The existing cesspool will be replaced with a Title V Septic System that has been approved by the Board of Health. Attorney Ament stated that an Order of Conditions is pending under advisement and is expected to be approved.

Attorney Ament noted that there is a 'kitchenette' proposed in the basement area where there is living space and two bedrooms with bathroom. He suggested that the Board has approved other properties such as this and that the space could be used by an 'au pair' or other family members and/or friends. He reiterated that the proposed dwelling is a single-family dwelling and that the basement area will not become a separate dwelling and for that purpose he submitted a draft Restrictive Covenant that will limit the use of the subject property to that of a single-family dwelling and that the basement cannot be rented separately from the main dwelling.

The Board discussed plans with Attorney Ament. All concerns and questions were addressed.

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

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 18 Abbies Lane in North Falmouth contains 9,919 square feet of Residential B zoned land that is not located within any coastal pond overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling, circa 1920, on subject property. The existing eleven-bedroom, three-story single-family dwelling has a nonconforming 12' setback to the front property line off Teele Street and a nonconforming 17' setback to front property line off Abbies Lane – both require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. A letter submitted to the file shows that the Building Commissioner made a determination under Section 240-13 "Definitions" – 'Yard, Front' – that Abbies Lane will be the front yard of subject property and that setbacks to Teele Street will be that for a side yard setback. Based on the designation of a front yard, the setback to Teele Street will have a conforming side yard setback of 10.2', and the setback to Abbies Lane will have an improved front yard setback of 23.9'. The proposed dwelling will be 2.5 stories and proposes to reduce the bedroom count from eleven (11) to seven (7); and the existing cesspool will be replaced by a Title V Septic System approved by the Board of Health. The height of the proposed dwelling is nonconforming at 37.2'; the proposed dwelling will be slightly improved with a height of 36.97'.

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 pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists and that the proposed dwelling plans

show that the existing nonconformities of the setbacks and height of dwelling will be slightly improved. The Board further finds that the reduction of bedrooms on subject property and proposed new Title V Septic System that replaces an existing cesspool will be great improvements to the property. Furthermore, the Board finds that the razing and reconstruction of the dwelling on subject property will be a benefit and enhancement of utilization for the residents of the property as the construction will be according to the current building/electrical code and the dwelling will be more energy and weather efficient.

The Board finds based on testimony by Attorney Ament on behalf of the applicant and by submission of a draft Restrictive Covenant, that there is no intent to utilize the basement space or any portion of the proposed structure as a separate dwelling. The Board further finds that the covenant will be reviewed by Town Counsel to insure appropriate limitations on subject property regarding single-family use only.

The Board finds that the Historical Commission has granted a waiver of the six month demolition delay bylaw to allow the existing single-family dwelling to be immediately razed.

In addition to the above findings, the Board finds that the proposed reconstruction of existing dwelling 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 reconstruction of the nonconforming dwelling as the existing nonconforming setbacks and height of the dwelling will be improved.
- B. The site is suitable for the proposed use as the property is zoned residential and the intent of the applicants is to maintain the use of the property as a single-family dwelling.
- C. There will be no impact on traffic flow and safety as there is a decrease 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 greatly 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 for the dwelling proposed with seven (7) bedrooms has been approved by the Board of Health according to submission of a 'Disposal System Construction Permit' to the file.
- F. There appears to be 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 possible updating of water service as there was no referral from the Water Department submitted to this file.
- 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 reconstructed dwelling with improvements 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Murphy 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 Janice S. Crowley, Trustee of Janice S. Crowley Realty Trust (herein referred to as Applicant) under 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 18 Abbies Lane, North Falmouth, MA. This special permit is subject to the following conditions:

1. The razing of existing dwelling, construction of new seven-bedroom – 2.5 story dwelling, all setbacks, height of dwelling, septic system, lot coverage and use of dwelling shall be as represented to the Board

and as shown on plans submitted and reviewed by the Board entitled as follows:

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- "Crowley Residence – 18 Abbies Lane" – Existing plans consisting of computer generated floor plans (3 floors and basement) and four pages of elevations – all with a Board date 'received' stamp of October 4, 2016;
- "Plot Plan" for Halliday Builders 18 Abbies Lane North Falmouth, MA as drawn by Warwick & Associates Inc. dated 9/28/2016 – stamped, signed and dated by Gary S. Labrie, PLS on 9/29/2016 with a Board date 'received' stamp of October 4, 2016;
- "New Residence for Andy Crowley 18 Abbies Lane Falmouth, MA" as drawn by William F. Lee, II, AIA consisting of Drawing Number 1 dated 8-09-16, Drawing 2, 3 and 4 dated 7-14-16 and Drawing 5 and 6 dated 7-27-16 – all stamped, signed and dated by William F. Lee, II, RA on 8/15/2016 and all with a Board date 'received' stamp of October 4, 2016; and
- "Concept Plan Crowley Residence 18 Abbies Lane North Falmouth, MA" drawn by Sudbury Design Group – not dated – with a Board date 'received' stamp of October 4, 2016.

2. There shall be no more than seven (7) bedrooms allowed on subject property.

3. Once the submitted draft of a 'Restrictive Covenant' has been approved by the Town, the applicant's representative shall file the signed covenant with the Barnstable Registry of Deeds. A copy of the covenant filed with the Registry shall be submitted to the Board of Appeals within sixty (60) days of the date this Decision is filed with the Town Clerk.

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 three 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: 104-16

Applicant: JANICE S. CROWLEY, TRUSTEE of Janice S. Crowley Realty Trust

Subject Property: 18 Abbies Lane, North Falmouth, Massachusetts  
Map 02A, Section 11, Parcel 021A, Lot 000A

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 to 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 # 104-16 Crowley, Trustee / filed w/ Town Clerk 11/23/16