

Zoning Board of Appeals Decisions Decisions for: 09-29-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 089-16

APPLICANT/OWNER(S): GREGORY B. MILLS and CAROL J. MILLS
of Falmouth, MA

SUBJECT PROPERTY: 83 Walker Street, Falmouth, Massachusetts
Assessor's Map: Map 47A, Section 09, Parcel 022, Lot 001

DEED/CERTIFICATE: Book 20308 / Page 015

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 5, 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 and detached garage on subject property known as 83 Walker Street in 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 September 29, 2016.
4. The public hearing was terminated on September 29, 2016, wherein the Board consisting of Acting Chairman Terrene Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate Gerald Potamis 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 Attorney Kevin P. Klauer, II 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

09/07/2016 Letter of support submitted to the file by abutter Taylor Heyl dated September 6, 2016

9/06/2016 E-mail letter of support from abutters Brian O'Connor and Sandra Allen O'Connor of 84 Walker Street

09/06/2016 E-mail from applicant with attached letter from Christopher Whelan and Jacqueline Whelan of 79 Walker Street with positive comments regarding proposed plans for subject property.

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

08/05/2016 Attorney Klauer, on behalf of applicant, submitted an application, authorization, fee, architectural existing and proposed floor and elevation plans, plot plan and photos of existing dwelling structure for special permit

09/09/2016 Letter from Attorney Klauer dated September 8, 2016 regarding attached revised "Plot Plan"

(noting setbacks)

9/21/2016 E-mail from Attorney Klauer in response to staff questions regarding basement existing (storage) and building height of existing structure (22')

Note: There are several e-mails from staff to Attorney Klauer with responses in the file regarding requests for information relative to the application

Letters/Referrals/E-mails from Town Departments

08/09/2016 Referral from Planning Department staff submitted to the file with no comment

08/09/2016 Referral from Conservation Commission submitted to the file that states: RDA scheduled before ConCom for 8/24/2016 hearing.

08/10/2016 Referral from Town Assessor submitted to the file with no comment.

08/11/2016 Referral from the Falmouth Fire Rescue Department submitted to the file with no comment

09/08/2016 Referral from Engineering Department submitted to the file with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for roof runoff.

09/21/2016 Conservation Commission submitted a copy of a "Determination of Applicability" with revision date of 8/25/2016, for subject property

Plans submitted by Applicant/Applicant's Representative

"Plot Plan – Proposed House" prepared for Carol and Gregory Mills 83 Walker Street Falmouth, Massachusetts drawn by BSS Design, Inc., plan dated August 10, 2016 with a final revision date of 8/25/16 – plan stamped and signed by Thomas J. Bunker, PLS and has a Board date 'received' stamp of September 9, 2016;

"Current Floor Plan" – hand drawn consisting of two pages showing existing floor plan and has a Board date 'received' stamp of August 5, 2016; and

"Proposed Plans at 83 Walker Street Falmouth, MA" prepared for Carol & Greg Mills by Longfellow Design Build Mark S. McCarthy consisting of: Drawing A-0 'Basement Floor Plan' dated 8/5/2016 with a Board date 'received' stamp of August 5, 2016; Drawing A-1 'First Floor Plan' dated 8/5/16 with a Board date 'received' stamp of August 5, 2016; Drawing A-2 'Second Floor Plan' dated 8/5/2016 and with a Board date 'received' stamp of August 5, 2016; Drawing A-3 'Third Floor Plan' dated 8/7/2016 with a Board date 'received' stamp of August 10, 2016; Drawing A-5 'Exterior Elevations' dated 8/5/2016 with a Board date 'received' stamp of August 5, 2016; and Drawing A-6 'Exterior Elevations' dated 8/5/16 with a Board date 'received' stamp of August 5, 2016.

Hearing:

Attorney Klauer reviewed existing site conditions, proposed site conditions and proposed reconstructed dwelling. It was noted that the subject property is not hooked to the Town sewer system and has drywells proposed.

The Board discussed plans with Attorney Klauer. Questions regarding the 'doorway' to the study on the first floor plan and the third level storage area were discussed. All concerns and questions were addressed.

Acting Chairman Hurrie 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 4 - 0.

Acting Chairman Hurrie 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 83 Walker Street in Falmouth contains 17,600 square feet of Residential C zoned land, of which 15,300 square feet is upland. The subject property is not located within any 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 and detached garage. The existing dwelling has a nonconforming setback of 3.8' from the structure to the front property line off Walker Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and a 3.0' setback from the detached garage to the northerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures and structures, parking and paving meets the requirements of Section 240-69 A. of the Code of Falmouth. The existing dwelling is a two-story, four-bedroom dwelling and there is a one-car detached garage; the proposed is a two-story, four-bedroom dwelling with an attached one-car garage. The lot coverage for the proposed dwelling will still be compliant with Section 240-69 A. as the existing dwelling structure has a height of approximately 22' according to testimony and submitted photo - the proposed dwelling elevation plan shows a height of 33.3', which is less than the 35' maximum height as required by Section 240-70 of the Code of Falmouth. The proposed dwelling will have an improved setback of 8.6' from the structure to the front yard property line off Walker Street; and the side yard setback will be slightly improved from a 3' setback to a 3.5' setback. The dwelling will remain a four-bedroom dwelling. The proposed plan (Plot Plan) shows the installation of three drywells - one at each corner of the front of the dwelling and one on the southerly side of the dwelling.

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 dwelling will not be substantially more detrimental than what currently exists as its location on the property will be very similar to the existing dwelling. The Board further finds that the nonconforming front and side yard setbacks will be slightly improved and the lot coverage will be maintained below the maximum percentage allowed in this residential zoned district. Furthermore, the Board finds that the proposed dwelling is in keeping with the general neighborhood, that it will not negatively impact the character of said neighborhood and the record shows support and positive comments for the project by abutters.

The Board finds that the existing dwelling has four bedrooms and the proposed dwelling will have four bedrooms. The Board further finds that the architectural plan Drawing A-1 shows a proposed 'office' on the first floor of the proposed dwelling with a standard door which may make the space a bedroom under the criteria for Title V in 310 CMR 15.00 Definitions. The Board discussed requiring that the space have at least a 4' cased opening to insure it not meet the criteria of a bedroom. Furthermore, the Board finds that the third level (1/2 floor) is noted on Drawing A-3 of the architectural plans as 'storage'; testimony by the applicant's representative was that the space would be finished and have heat (the plan does not show any closet area or bathroom in this space). The Board discussed that the area on the third level will be conditioned herein to not be allowed a bedroom or sleeping accommodations; and the Board herein defers the privacy issue and use of said room to the Board of Health so long as it does not become a bedroom or sleeping accommodations

The Board finds that the plot plan submitted and noted herein shows the location for installation of three drywells for the proposed dwelling.

In addition to the above findings, the Board finds that the proposed reconstruction of the two-story, four-bedroom 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 as the footprint of the proposed dwelling is similar to what is existing with slightly improved nonconforming setbacks, while maintaining compliance with the lot coverage requirements.
- B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used as a single-family dwelling 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 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 homes 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 will require sign off for the proposed project by the Board of Health prior to construction.

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.

The Board of Appeals has weighed the effects of the proposed reconstruction of the single-family dwelling 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 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 4 – 0 to Grant the Special Permit to Gregory B. and Carol J. Mills (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming dwelling and detached garage on subject property known as 83 Walker Street in Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the existing dwelling and detached garage, all setbacks, height of dwelling, lot coverage and use of space within 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 – Proposed House" prepared for Carol and Gregory Mills 83 Walker Street Falmouth, Massachusetts drawn by BSS Design, Inc., plan dated August 10, 2016 with a final revision date of 8/25/16 – plan stamped and signed by Thomas J. Bunker, PLS and has a Board date 'received' stamp of September 9, 2016;

- "Current Floor Plan" – hand drawn consisting of two pages showing existing floor plan and has a Board date 'received' stamp of August 5, 2016; and

- "Proposed Plans at 83 Walker Street Falmouth, MA" prepared for Carol & Greg Mills by Longfellow Design Build Mark S. McCarthy consisting of: Drawing A-0 'Basement Floor Plan' dated 8/5/2016 with a Board date 'received' stamp of August 5, 2016; Drawing A-1 'First Floor Plan' dated 8/5/16 with a Board date 'received' stamp of August 5, 2016; Drawing A-2 'Second Floor Plan' dated 8/5/2016 and with a Board date 'received' stamp of August 5, 2016; Drawing A-3 'Third Floor Plan' dated 8/7/2016 with a Board date 'received' stamp of August 10, 2016; Drawing A-5 'Exterior Elevations' dated 8/5/2016 with a Board date 'received' stamp of August 5, 2016; and Drawing A-6 'Exterior Elevations' dated 8/5/16 with a Board date 'received' stamp of August 5, 2016.

2. There shall be no more than four bedrooms allowed on subject property.

3. There shall be no bedrooms or sleeping accommodations allowed on the third floor of the dwelling. The Board of Health shall determine if the space shall remain open to the second floor with no door or if said space is allowed to be finished and habitable (the plan notes 'storage').

- 4. The room noted on Drawing A-1 (first floor plan) as 'office' shall have a four foot (4') cased opening instead of a standard door and shall be maintained as such so as not to meet the criteria of a bedroom.
- 5. 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.
- 6. The Applicant shall meet the requirements of the DPW Water Division.
- 7. 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.)
- 8. This permit shall lapse three (3) 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: 089-16

Applicant: Gregory B. Mills and Carol J. Mills

Subject Property: 83 Walker Street, Falmouth, MA
Map 47A, Section 09, Parcel 022, 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 – 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, Acting Chairman, 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 089-16 Walker, filed w/Town Clerk 10/7/16