

## 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: 102-16

APPLICANT/OWNER: RANDALL SHERMAN and MAUREEN SHERMAN of Medfield, MA

SUBJECT PROPERTY: 16 Joyce Street, East Falmouth, Massachusetts  
Assessor's Map: Map 40, Section 02A, Parcel 000, Lot 204

DEED/CERTIFICATE: Book 29157 / Page 317

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 3, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to raze the existing one-story dwelling and construct a 1.5 story dwelling with attached garage and lot coverage by structures exceeding 20% on subject property known as 16 Joyce Street, East 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 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 Laura Moynihan, 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

10/14/2016 6 letters of support filed by Attorney Moynihan signed as follows:

- Fred Toran of 66 Joyce Street
- Paul Harvey of 43 Joyce Street
- William Corcoran of 20 Joyce Street
- James D. McCarthy of 7 Joyce Street
- Joan Holchey of 49 Joyce Street
- Robert & Doreen Kilgoar of 42 Joyce Street

10/21/2016 Attorney Moynihan submitted a letter of support signed by Maureen Bailey of 23 Joyce Street

11/14/2016 Letter of no objection submitted to the file from Janis M. Stanzani, Esq of 72 Sandpiper Circle

11/16/2016 E-mail from Attorney Moynihan with attached letter of support signed by Diane Adler of 10 Joyce Street

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

10/03/2016 Attorney Moynihan submitted on behalf of the applicant, an application, fee, plans, lot coverage calculations and authorization for representation

10/03/2016 E-mail from Attorney Moynihan responding to ZBA staff's request for information on basement, storage space and bonus room on 2nd floor will be heated – use of basement is workshop and office area

10/03/2016 Attorney Moynihan submitted field cards on 17 houses in the general area as shown on her Lot Coverage Analysis submitted same day and revised on October 5, 2016 (ZBA submitted photos of all houses on the Lot Coverage Analysis list for visual comparison).

10/03/2016 Attorney Moynihan submitted a letter dated September 29, 2016 from Randy Sherman of RSS Construction Inc. stating existing height of dwelling is 17'

10/14/2016 Letter from Attorney Moynihan dated October 13, 2016 with six letters of support attached and are noted above with date of 10/14/2016

Letters/Referrals/E-mails from Town Departments

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

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

10/06/2016 Referral submitted to the file by the Engineering Department with comments regarding drainage and stormwater runoff – recommendation if driveway is asphalt that drainage provisions be included that prevents stormwater discharge into Joyce Street

10/08/2016 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment

10/31/2016 Referral submitted to the file by the Conservation Commission that states: Install trench drain in driveway, gutters/drywells with house. Contain stormwater on property – stormwater is an issue down Joyce Street to west. Flow towards association recreation center to wetlands.

Plans submitted by Applicant/Applicant's Representative

"Existing Conditions Plan for #16 Joyce Street" prepared for RSS Construction, Inc. in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated June 16, 2016 with final revision date of 9/26/2016 and stamped, signed and dated by Gary S. Labrie, PLS on 9/26/2016 – Board date 'received' stamp of October 3, 2016;

"Plot Plan for #16 Joyce Street" prepared for RSS Construction, Inc. in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated June 16, 2016 with a final revision date of 11/15/2016, stamped, signed and dated by Gary S. Labrie, PLS on 11/16/2016, stamped and signed by Michael J. Borselli, P.E. and with a Board date 'received' stamp of November 16, 2016;

"Septic System Details for #16 Joyce Street" prepared for RSS Construction, Inc. in Falmouth, MA – Sheet 3 of 3 dated June 16, 2016 with a final revision date of 9/26/2016 and stamped and signed by Michael J. Borselli, PE – with a Board date 'received' stamp of October 3, 2016;

Hand drawn floor plan of existing dwelling at 16 Joyce Street with a Board date 'received' stamp of October 3, 2016; and

"Sherman Residence 16 Joyce Street Falmouth, MA" Custom two-story home with two-car garage plans drawn by JB Designs consisting of Pages 1, 2 and 3 of 8 all dated 8/19/2016 showing Proposed Elevations, Floor Plans and Foundation Plan – all with a Board date 'received' stamp of October 3, 2016.

Hearing:

Attorney Moynihan reviewed the existing site conditions noting the existing one-story, three bedroom single-family dwelling is in compliance with all setbacks. The existing lot coverage is also conforming at

10.3%. The existing dwelling has a height of approximately 17'. The proposed dwelling will be a cape-style 1.5 story dwelling with three bedrooms with a height of 25.4'. The applicant applied under 240-69 E. of the Code of Falmouth as the lot coverage will be increased from 10.3% to 23.1% and the existing shed at the northeast corner of the property will be removed and not replaced. The proposed dwelling will have an attached two-car garage; the proposed will remain a three bedroom dwelling. She reviewed the proposed 'storage' space and 'bonus room' (play room/sitting room) on the second level and noted the spaces would be heated. A portion of the basement area will be for a workshop and office space. The 'Plot Plan' was revised on 11/15/2016 to show the addition of drywells (4 total) and trench drain across the driveway to contain stormwater runoff onto subject property. There will be a new septic system (440 gpd flow) installed on subject property. Attorney Moynihan explained that the increase of lot coverage above 20% (310 square feet) is primarily due to the covered patio proposed at the rear of the dwelling that covers approximately 200 square feet of patio area.

The Board discussed plans with Attorney Moynihan. 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 Foreman made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Bielan closed the hearing. The Board discussed the application.

## 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 Joyce Street in East Falmouth contains 10,000 square feet of Residential B zoned land that is located within the Great Pond Coastal Pond Overlay District and the Search and Rescue Overlay District. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to raze the existing one-story dwelling and construct a 1.5 story dwelling with attached garage and lot coverage by structures exceeding 20% on subject property. The proposed dwelling will be in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth. The applicant asked for relief under Section 240-69 E. of the Code of Falmouth to allow lot coverage by structures to exceed the maximum 20% allowed by right in a residential district. The dwelling will remain a three-bedroom dwelling as shown by the proposed floor plans submitted as Page 2 of 8 drawn by JB Designs. The applicant's representative gave testimony that the 'storage area' and 'bonus room' shown on the second floor will be heated and that the 'bonus room' will be used as a playroom or sitting room. The proposed basement space is noted on Drawing 3 of 8 drawn by JB Designs as having a workshop and an office only. The proposed dwelling will have a two-car garage for vehicle and/or personal storage with no habitable space.

Section 240-69 the Code of Falmouth – "Maximum lot coverage." – Sub-section E. allows the Board of Appeals to issue a special permit allowing lot coverage by structures to exceed 20% - up to 25% after consideration is given to proposed structure's height on size compared to other structures within the neighborhood, whether there is any shadowing on adjacent properties, if any view or vista from a public way is impacted and if there is any effect of nitrogen on coastal embayment.

The Board finds that the size and height of the proposed structure appears to be in keeping with other properties in the Shorewood Drive subdivision area that are upgrading and/or improving dwellings such as the proposed herein and that the design of the 1.5 story dwelling limited the Board's concerns of 'bulk'. The Board further finds there will be no 'shadowing' of adjacent properties through the proposed dwelling as the height of the dwelling will be 25.4' and placement on subject property will be such that there is no shadowing effect. Furthermore, the Board finds that there will be no impact on a view or vista from a public way and that there will be no effect on a coastal embayment from the proposed reconstruction of a dwelling on subject property.

The Board finds that the "Plot Plan" shows the removal of the existing shed in the northeast corner of subject property and testimony was given by the applicant's representative that there will be no replacement of the shed on subject property. The Board further finds that the applicant addressed the Conservation Commission and Engineering Department's concern of drainage on site and submitted a

revised "Plot Plan" (11/16/2016) that shows the addition of four (4) drywells on subject property as well as a 'trench drain' across the front of the driveway to maintain stormwater runoff on subject property.

In addition to the above findings, the Board finds that the proposed reconstruction of a single-family 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 dwelling with attached two-car garage as all setbacks are in compliance with Town Code and the increase of lot coverage by structures is herein approved based on criteria set forth in Section 240-69 E. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and will be used as a single-family three-bedroom dwelling.
- 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 proposed for subject property will require approval and sign-off by the Board of Health prior to the issuance of a building permit. It is noted that although the proposed septic system for subject property will have the capacity of a four-bedroom dwelling with a 440 gpd flow, the proposed plans submitted, reviewed and approved by the Board will be a three-bedroom dwelling.
- 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 as there was no referral submitted by the Water Department regarding possible updated of water service.
- 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 dwelling reconstruction 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 Hurrie seconded the motion. Motion carried 5 – 0.

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 Randall and Maureen Sherman (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to raze the existing one-story, three-bedroom single-family dwelling and construct a 1.5 story, three-bedroom single-family dwelling with attached two-car garage on subject property known as 16 Joyce Street, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing dwelling, removal of the existing shed, construction of new three-bedroom dwelling with attached two-car garage, all setbacks, height of dwelling, lot coverage and use of dwelling spaces shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

"Existing Conditions Plan for #16 Joyce Street" prepared for RSS Construction, Inc. in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated June 16, 2016 with final revision date of 9/26/2016 and stamped, signed and dated by Gary S. Labrie, PLS on 9/26/2016 – Board date 'received' stamp of October 3, 2016;

"Plot Plan for #16 Joyce Street" prepared for RSS Construction, Inc. in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated June 16, 2016 with a final revision date of 11/15/2016,

stamped, signed and dated by Gary S. Labrie, PLS on 11/16/2016, stamped and signed by Michael J. Borselli, P.E. and with a Board date 'received' stamp of November 16, 2016;

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2. The shed noted on the "Plot Plan" submitted and noted herein shall be removed and not relocated or replaced. There shall be no shed addition to subject property without further review by the Board of Appeals.

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 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: 102-16

Applicant: RANDALL and MAUREEN SHERMAN of Medfield, MA

Subject Property: 16 Joyce Street, East Falmouth, Massachusetts  
Map 40, Section 02A, Parcel 000, Lot 204

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 #102-16 Sherman / filed w/Town Clerk 11/23/16