

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 129-16

APPLICANT/OWNER: STEPHEN A. SCULLEN, III and DAURENE B. SCULLEN
of Hingham, MA

SUBJECT PROPERTY: 16 Worcester Court, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 16, Parcel 007, Lot 016

DEED/CERTIFICATE: Book 29900 / Page 213

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 16, 2016, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #093-16 pursuant to Section(s) 240-3 C. of the Code of Falmouth to demolish and rebuild the pre-existing nonconforming single-family dwelling in the same footprint with the same building height on subject property known as 16 Worcester 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 January 19, 2017
4. The public hearing was terminated on January 19, 2017, 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 Kevin P. Klauer, II with Ament Klauer LLP 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)

None

Letters/Referrals/E-mails from Town Departments

- 12/20/2016 Referral from Conservation Commission submitted to the file with comment regarding stormwater runoff to be contained on site
- 12/19/2016 Referral from the Planning Department staff submitted to the file with no comment
- 12/21/2016 Referral from the Town Assessor submitted to the file with the comment: *Easement over Lot 16 for the use of Lot 18.*
- 12/23/2016 Referral from Falmouth Fire Rescue Department submitted to the file with no comment
- 01/17/2017 Referral from the Engineering Department submitted to the file with standard comments about right of way change requires application to the Engineering department, project cannot direct any stormwater runoff to public property, abutters, or right of ways; and that they recommend adding dry wells, rain garden, or other stormwater measure for the roof.

Plans submitted by Applicant/Applicant's Representative

“Certified Plot Plan 16 Worcester Court in Falmouth, Massachusetts” drawn by Cape & Islands Engineering dated August 13, 2016 – stamped, signed and dated by Matthew C. Costa, PLS on August 15, 2016 and with a Board date ‘received’ stamp of December 16, 2016;

“Existing Conditions at 16 Worcester Court Falmouth, MA” prepared for Daurene & Steve Scullen by Longfellow Design Build, Mark S. McCarthy consisting of Drawing EX-1 ‘Existing First Floor Plan’ dated 7/17/2016, Drawing EX-2 ‘Existing Second Floor Plan’ dated 7/17/2016 and Drawing EX-3 ‘Existing Exterior Elevations’ dated 7/17/2016 – all with a Board date ‘received’ stamp of December 16, 2016; and

“Proposed Renovations at 16 Worcester Court Falmouth, MA” prepared for Daurene & Steve Scullen by Longfellow Design Build, Mark S. McCarthy consisting of Drawing A-1 ‘First Floor Plan’ dated 8/10/2016, Drawing A-2 ‘Second Floor Plan’ dated 8/10/2016, Drawing A-3 ‘Exterior Elevations’ dated 8/10/2016 and Drawing A-4 ‘Exterior Elevations’ dated 8/10/2016 – all with a Board date ‘received’ stamp of December 16, 2016.

Hearing:

Attorney Klauer reviewed the project noting that a previous special permit was granted to allow a full dormer to increase space in existing bedrooms and that during the interior demolition for renovation it was found that the framing and foundation were in poor condition and recommended by structural engineer to demolish and rebuild the structure. He reviewed the proposed plan to re-build the single-family dwelling in the exact footprint as the existing dwelling. The existing dwelling had five (5) bedrooms and the proposed will have four (4) bedrooms. The height of the dwelling was 24’, the proposed height will be 27’ – well under the 35’ maximum allowed by code. The proposed structure will

maintain all nonconforming setbacks and not become more nonconforming. Attorney Klauer reviewed the existing "Exclusive Use Easement" on subject property for the abutter, and noted that to move the proposed house to improve the nonconforming side yard setback may possibly compromise the easement. Attorney Klauer noted that they do not anticipate any additional runoff through the reconstruction and that all runoff will be maintained on site. He further stated that there will be a septic upgrade for a four-bedroom system.

The Board discussed the proposed and asked about the basement in the proposed reconstructed dwelling. Attorney Klauer stated it will remain unfinished.

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 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 Worcester Court in Falmouth contains 6,874 square feet of Residential C zoned land that 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 five (5) bedroom single-family dwelling in the exact same footprint as was existing. The dwelling structure has a nonconforming 12.7' setback to the front property line off Worcester Court that requires a 25' setback under Section 240-68 A. of the Code of Falmouth, a 4.1' nonconforming setback to the northerly side yard property line that requires a 10' setback under Section 240-68 B. of the Code of Falmouth and there is also a detached garage structure in the rear yard that has a nonconforming setback of 7.7' to the rear property line that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. Lot coverage by structures is nonconforming at 22.2% as it exceeds the 20% maximum allowed by right under Section 240-69 A. of the Code of Falmouth; total lot coverage is under the maximum 40% allowed and therefore is in compliance with same section. There are currently three bedrooms and a bath on the second level and two bedrooms and a bath on the first level. The proposed plans show one bedroom, bathroom and powder room on the first floor and three bedrooms one of which is a master bedroom with bath and a second bathroom on the second floor. The proposed basement will be unfinished according to testimony by the applicant's representative. The height of the dwelling is currently 24'; the proposed height will be at 27', which is below the 35' maximum height requirement in Section 240-70 of the Code of Falmouth.

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 re-construction of the existing dwelling is in keeping with the neighborhood character. The Board further finds that there will be no increase in the footprint of the existing dwelling structure since it will be re-constructed on same footprint, there will be no increase in existing setbacks and no increase to the nonconforming lot coverage by structures through this special permit request. Furthermore, the Board finds that the proposed plans for the reconstruction of the dwelling will be an improvement to the utilization of the dwelling by its residents.

The Board finds that the number of bedrooms is being reduced from five to four; and there is no referral from the Board of Health noting a septic or cesspool system. Testimony by the applicant's representative was that a septic upgrade to a four-bedroom system will be completed. Any changes to the dwelling will require sign off by the Board of Health prior to issuance of a building permit. The Board further finds through testimony by the applicant and notation on the plans submitted and reviewed, the basement space existing is unfinished and will remain unfinished through this application.

The Board finds through testimony by the applicant's representative and the "Certified Plot Plan" submitted for review, that there is an "Exclusive Use Easement" on abutting Lot 18 for subject property as an appurtenant easement, which according to Easement found under Book 8734/Page 144 (Registry of Deeds filing) the residents of subject property have rights to use easement for: "*....all ordinary purposes that residential property is used, including parking of automobiles and the maintenance, right to repair and/or replace fencing along the easterly bound of said property.*"

In addition to the above findings, the Board finds that the proposed 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 existing dwelling as there will be no increase in existing nonconformities and no new nonconformities created on subject property through this application.
- 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 residence 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 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 may be upgraded according to applicant's testimony - the Board of Health is required to sign-off on building permit application before issuance of a building permit. The proposed plans show a decrease of one bedroom on subject property.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed reconstruction of the dwelling 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 pre-existing nonconforming 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 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 Stephen A. Scullen, III and Daurene B. Scullen (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to reconstruct the pre-existing nonconforming single-family dwelling in the exact same footprint as existing on subject property known as 16 Worcester Court, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The reconstruct of the dwelling, all setbacks, lot coverage, height of dwelling 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:
 - “Certified Plot Plan 16 Worcester Court in Falmouth, Massachusetts” drawn by Cape & Islands Engineering dated August 13, 2016 – stamped, signed and dated by Matthew C. Costa, PLS on August 15, 2016 and with a Board date ‘received’ stamp of December 16, 2016;
 - “Existing Conditions at 16 Worcester Court Falmouth, MA” prepared for Daurene & Steve Scullen by Longfellow Design Build, Mark S. McCarthy consisting of Drawing EX-1 ‘Existing First Floor Plan’ dated 7/17/2016, Drawing EX-2 ‘Existing Second Floor Plan’ dated 7/17/2016 and Drawing EX-3 ‘Existing Exterior Elevations’ dated 7/17/2016 – all with a Board date ‘received’ stamp of December 16, 2016; and
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2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no bedrooms or sleeping accommodations created within the basement area of the dwelling herein discussed.
4. There shall be no shed located on subject property without prior approval by the Board of Appeals.

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. 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 (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: **129-16**

Applicant: **STEPHEN A. SCULLEN, III & DAURENE B. SCULLEN of Hingham, MA**

Subject Property: **16 Worcester Court, Falmouth, Massachusetts
Map 46B, Section 16, Parcel 007, Lot 016**

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.