

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 027-17

APPLICANT/OWNER: PAMELA R. FRORER, TRUSTEE of 34 Tupelo Road Realty Trust

SUBJECT PROPERTY: 34 Tupelo Road, West Falmouth, Massachusetts
Assessor's Map: Map 25, Section 07, Parcel 009, Lot 221

DEED/CERTIFICATE: Certificate 210411 – Lot 221, Plan 12010-10

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 11, 2017 (Amended April 13, 2017), the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to raze a portion of the pre-existing nonconforming dwelling and garage and reconstruct in a different configuration on subject property known as 34 Tupelo Road, West 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 May 25, 2017.
4. The public hearing was terminated on May 25, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, 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 Raul Lizardi-Rivera, P.E. with Holmes & McGrath, Inc., 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)

05/16/2017 E-mail from Holmes and McGrath, Inc. responding to Referral submitted to the file by the Town Engineering Department

05/17/2017 Letter from Holmes and McGrath, Inc. responding to Town Engineering Department's referral regarding public utilities, driveway and trench drain for proposed application

05/22/2017 E-mail from Conservation Commission Agent Kasprzyk regarding NOI filed by applicant with hearing continued to 6/7/2017

Letters/Referrals/E-mails from Town Departments

04/18/2017 Referral submitted to the file by Planning Department staff with no comment

04/18/2017 Referral submitted to the file by the Director of Assessing noting that subject property includes Lots 149A, 150A and 221

04/20/2017 Referral submitted to the file by Falmouth Fire Rescue Department with no comment

05/01/2017 Referral submitted to the file by Historic District Committee noting that property is not within the Historical District

05/12/2017 Referral submitted to the file by Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Tupelo Road is a Private right of way in this area. 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. It appears that the project includes drywells for the roof, a change from impervious to pervious driveway surface for a portion of the driveway, and a leaching basin for the new driveway (see below). We do not recommend the use of trench drains; they tend to clog quickly and no longer work as intended. A beehive frame and grate over a solid structure is recommended.*

Plans submitted by Applicant/Applicant's Representative

“Plan of Existing Conditions” prepared for 34 Tupelo Road Realty Trust for Lot 221, #34 Tupelo Road in West Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated January 17, 2017 with a revised date of 3/24/17 – stamped and signed by Michael B. McGrath, P.L.S. with a Board date ‘received’ stamp of April 12, 2017;

“Plan of Proposed Site Improvements” prepared for 34 Tupelo Road Realty Trust for Lot 221, #34 Tupelo Road in West Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated April 5, 2017 – stamped and signed by Michael B. McGrath, P.L.S. and stamped and signed by Michael B. McGrath, P.E. with a Board date ‘received’ stamp of April 12, 2017;

“Frerer – Pinis Residence” Existing Plans drawn by Beatrice A. Bunker Architecture consisting of Drawing EX-1 ‘1st and 2nd Floor Plans (Existing Conditions)’, EX-2 ‘East & West Elevations’, and EX-3 ‘South & North Elevations (Existing Conditions)’ and EX-4 ‘Basement Plan’ - all dated June 17, 2016 and with a Board date ‘received’ stamp of April 12, 2017;

“Frerer – Pinis Residence” 64 Tupelo Road, West Falmouth, MA as drawn by Beatrice A. Bunker Architecture consisting of Drawing 1 ‘First Floor Plan’, Drawing 2 ‘Second Floor Plan’, Drawing 3 ‘North and West Elevations’, Drawing 4 ‘Southeast and East Elevations’ – all dated March 28, 2017 and with a Board date ‘received’ stamp of April 12, 2017; and

“Frerer – Pinis Residence” 64 Tupelo Road, West Falmouth, MA as drawn by Beatrice A. Bunker Architecture consisting of Drawing EX-4 ‘Basement Plan (existing)’ dated June 17, 2017 and

Drawing 5 'Proposed Basement Plan' dated March 28, 2017 – both with a Board date 'received' stamp of April 19, 2017.

Hearing:

Raul Lizardi-Rivera reviewed the existing site conditions and proposed changes to the existing single-family dwelling on subject property and noted that the only nonconformity is the 30' setback from the existing deck to the 4' contour line off the waters of Buzzards Bay. The nonconforming setback will be improved to 33'. The plan is to raze a portion of the existing house and garage from the northerly façade of the dwelling and reconstruct an addition and attached garage to the southerly façade of the dwelling. The proposed entry porch (rear view) will be 43' from the 4' contour line. Drywells will be installed to maintain the roof runoff and the driveway will be converted to a pervious surface that will drain to the leaching field via a trench drain that is proposed. There will be no increase in the number of bedrooms – two existing – and there will be no new nonconformities created through the proposed plans. The height of the proposed structure will be 25'.6".

The Board discussed plans with Mr. Rivera. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Member Foreman made a motion to close the hearing. Member Van Keuren 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 34 Tupelo Road in West Falmouth contains 55,867 square feet of Residential B zoned land that is located within the Great Sippewissett Marsh Coastal Pond Overlay District, the Natural Heritage and Endangered Species Priority Program and is located partially within the Historic District on the southeast side of the lot. The applicant applied under Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to raze a portion of the pre-existing nonconforming dwelling and garage and reconstruct in a different configuration on subject property. The structure has a pre-existing nonconforming setback of 30' to the 4' contour line off the Waters of Buzzard's Bay that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The existing dwelling, circa 1970's, has two bedrooms and one and one-half bathrooms and an attached garage. The plans submitted show that the nonconforming setback of 30' to the 4' contour line off the waters of Buzzard's Bay will be improved to a 33' setback and no other nonconformities created; the new additions will be no closer than 42' to the waters off Buzzards Bay. The dwelling will remain a two-bedroom dwelling with two and one-half bathrooms through alteration/changes. The changes to the dwelling will result in a height of 25'6" according to Drawing 3 'West Elevations' submitted and noted below.

The Board finds that the subject property is within the District of Critical Planning Concern (DCPC) and is limited to the area in which development can be accomplished. The Board further finds that the proposed meets the requirement of regulations for this DCPC according to the "Plan of Proposed Site Improvements" submitted to this file and reviewed by this Board.

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 alteration and change to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed plans improve the nonconforming setback of the existing dwelling deck to the 4' contour line off the waters of Buzzard's Bay from 30' to 33' and that the proposed additional habitable space and garage will be no closer than 42' to the 4' contour line off the waters of Buzzards Bay. Furthermore, the Board finds that the proposed changes and alterations to the existing dwelling will not create any new nonconformities pursuant to Sections 240-68 A. and B. and Section 240-69 A. of the Code of Falmouth.

The Board finds that the subject property, as proposed with the changes herein discussed, will remain below the lot coverage maximum allowed in this zoning district pursuant to Section 240-69 A. of the Code of Falmouth. The Board further finds according to testimony by the applicant's representative that application for subject property is currently before the Conservation Commission (continued to discuss mitigation plantings) and will be approved at a future date.

The Board finds that the land will be improved with additional drywells proposed and a french drain within the driveway to maintain stormwater runoff on the site; and creating a pervious surface on the driveway. Testimony from the project engineer relative to the referral from Town Engineer was that the French drain is more appropriate for a residential use as the drain is approximately 24" deep and easier to clean and maintain than a catch basin.

The Board finds that the existing dwelling is a two-bedroom dwelling and as proposed, the dwelling will remain a two-bedroom dwelling.

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 changes discussed herein as there is a slight improvement in the nonconforming setback to the 4' contour line of the waters off Buzzards Bay and that all other setbacks and lot coverage are in compliance with the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained through this special permit approval as a two-bedroom single-family 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; and there is no impact on any view or vista from the roadway or abutting properties.

E. Testimony by the applicant's representative was that the composting toilet has been signed off by the Board of Health and that the proposed changes to the dwelling will be reviewed by the Board of Health prior to issuance of a building permit.

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 the Board did not receive a referral from the Water Department.

G. The proposed reconstruction of a portion of the existing dwelling structure as reviewed by the Board, 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 change and alteration to the pre-existing nonconforming dwelling structure on subject property 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 Foreman 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 Pamela R. Frorer, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze a portion of the pre-existing nonconforming dwelling and garage and reconstruct in a different configuration on subject property known as 34 Tupelo Road, West Falmouth, MA. This special permit is subject to the following conditions:

1. The razing of a portion of the existing dwelling structure and attached garage, constructing addition and attached garage to the dwelling, all setbacks, height of dwelling structure, lot coverage, drywell installation, french drain installation, pervious driveway and use of subject dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plan of Existing Conditions” prepared for 34 Tupelo Road Realty Trust for Lot 221, #34 Tupelo Road in West Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated January 17, 2017 with a revised date of 3/24/17 – stamped and signed by Michael B. McGrath, P.L.S. with a Board date ‘received’ stamp of April 12, 2017;
 - “Plan of Proposed Site Improvements” prepared for 34 Tupelo Road Realty Trust for Lot 221, #34 Tupelo Road in West Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated April 5, 2017 – stamped and signed by Michael B. McGrath, P.L.S. and stamped and signed by Michael B. McGrath, P.E. with a Board date ‘received’ stamp of April 12, 2017;
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2. This Board herein adopts and incorporates into this Decision the Orders of Conditions to be approved and signed by the Conservation Commission for subject property as proposed herein.
3. There shall be no more than two (2) bedrooms allowed on subject property.

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: **027-17**

Applicant: **PAMELA R. FRORER, TRUSTEE of 34 Tupelo Road Realty Trust**

Subject Property: **34 Tupelo Road, West Falmouth, Massachusetts
Map 25, Section 07, Parcel 009, Lot 221**

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.

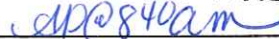


Terrence J. Hurrie, Clerk, Board of Appeals

RECEIVED

JUN - 2 2017

FALMOUTH TOWN 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.