

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 040-17

APPLICANT/OWNER: JOHN E. GROSS and PAMELA TWITCHELL-GROSS of Amherst, NH

SUBJECT PROPERTY: 19 Cove Road, North Falmouth, Massachusetts
Assessor's Map: Map 04, Section 05, Parcel 013A, Lot 013

DEED/CERTIFICATE: Book 17486 / Page 295

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 26, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-68 A. of the Code of Falmouth to construct a second floor addition, attached garage and an addition at the rear of the pre-existing nonconforming single-family dwelling on subject property known as 19 Cove Road, North 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 July 20, 2017.
4. The public hearing was terminated on July 20, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence 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 of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Raul Lizardi-Rivera, P.E. with Holmes and 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)

05/26/2017 Holmes and McGrath, Inc. submitted a complete application with fee and plans (architectural and site plans) for hearing process

- 06/12/2017 Letter submitted to the file addressed to George Gakidis from Wilbur E. Yoder, AIA, PE regarding Gross Residence, 19 Cove Road, No. Falmouth and integrity of existing foundation to carry a second floor addition with a Board date 'received' stamp of June 12, 2017
- 07/20/2017 Raul Lizardi-Rivera, P.E. submitted to the file during the hearing a letter in support of the proposed 'renovation' project on subject property signed by twelve (12) individuals from surrounding neighbors

Letters/Referrals/E-mails from Town Departments

- 06/01/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/01/2017 Referral submitted to the file from the Planning Department staff with no comment
- 06/05/2017 Referral submitted to the file from the Director of Assessing with no comment
- 06/20/2017 Referral submitted to the file from Conservation Commission that states the property is not within their jurisdiction

Plans submitted by Applicant/Applicant's Representative

"Plan of Existing Conditions" prepared for John Gross for Lot 13, #19 Cove Road in North Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 9, 2017, stamped, signed and dated by Joel R. Kubick, PLS on May 22, 2017 and with a Board date 'received' stamp of May 26, 2017;

"Plan of Proposed Sewage Disposal System" prepared for John Gross for Lot 13, #19 Cove Road in North Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 2 dated May 9, 2017 – stamped and signed by Joel R. Kubick, PLS and Raul Lizardi-Rivera, PE and with a Board date 'received' stamp of May 26, 2017;

"Plan (Construction Details) of Proposed Sewage Disposal System" prepared for John Gross for Lot 13, #19 Cove Road in North Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 2 dated May 9, 2017 – stamped and signed by Timothy M. Santos, P.E. and with a Board date 'received' stamp of May 26, 2017;

"Sketch of Existing Floor Plan" - computer generated, not dated and with a Board date 'received' stamp of May 26, 2017 (one page); and

"The Gross Residence – 19 Cove Road North Falmouth, MA" plans drawn by Wilbur E. Yoder, AIA, PE consisting of Drawing S1.0 'Foundation Plan' dated 7/01/17, Drawing A1.1 'Floor Plan' dated 7/01/17, Drawing A1.2 'Floor Plan' dated 7/01/17, Drawing A2.0 'Elevation' dated 7/01/17, Drawing A2.1 'Elevation' dated 7/01/17 and Drawing A3.0 'Sections' dated 7/01/17 – all drawings have a Board date 'received' stamp of July 14, 2017.

Hearing:

Raul Lizardi-Rivera reviewed the existing site and structure conditions noting the nonconforming front yard setback of 21.3' and a 9.7' nonconforming setback to the westerly side yard property line; the lot coverage is in compliance at 14.3% by structures. The proposed attached garage and additions/renovations to the existing dwelling will slightly improve the nonconforming front yard setback to 22' and eliminate the nonconforming 9.7' setback at the side yard (removing the existing deck and creating a patio). The proposed addition to the rear of the dwelling and the attached garage will both have a second floor – the addition will allow for increased space for the existing kitchen and create a master bedroom and bath where one bedroom and bath is located on first floor and the relocating the remaining two bedrooms to the proposed second floor addition. The space of the proposed attached garage will be an office space as shown on the plans submitted. The proposed additions, with the removal of the existing deck, will keep lot coverage in compliance with allowed maximums according to bylaw. There is an existing cesspool that will be removed and a new septic system will be installed. The height of the dwelling with the second floor addition will be approximately 26' in height.

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

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

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Foreman 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 19 Cove Road in in North Falmouth contains 10,320 square feet of Residential C zoned land that is within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. and 240-68 A. of the Code of Falmouth to construct a second floor addition, an addition to the rear of the property and an attached garage. The dwelling structure has a nonconforming setback of 23.1' to the front property line off Cove Road that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth (applicant applied under this bylaw for an existing nonconformity); and a nonconforming setback to the westerly side property line of 9.7' that requires a setback of 10' pursuant to Section 240-68 B. of the Code of Falmouth. The existing dwelling is a one-story three-bedroom single-family dwelling. The cesspool is to be removed and a new Title V septic system is to be installed. During the hearing process the applicant's representative stated that the proposed dwelling will remain as a three-bedroom dwelling and have a new three-bedroom septic system installed. The plans submitted, specifically Sheet 2 of 2 drawn by Holmes and McGrath, Inc. entitled "Plan (Construction Details) of Proposed Sewage Disposal System" – signed and stamped by Timothy M. Santos, P.E., shows the plans for subject property to install a five-bedroom capacity system. This is specifically noted as there is a 'home office' proposed shown in Drawing A1.2 drawn by

Wilbur E. Yoder, AIA, PE. The 'home office' meets the criteria of a bedroom under CMR regulations and therefore requires no less than a four-bedroom septic system for subject property.

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 additions, as represented herein, to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed plan to remove the existing deck on the west side of the dwelling will allow for the nonconforming setback to become conforming so that the 9.7' setback will become a 23' setback to the westerly side property line. Furthermore, the Board finds that the applicant took care by removing the deck to insure the lot coverage remained below the maximum allowed by right pursuant to Section 240-69 A. of the Code of Falmouth for this residential zoned district.

The Board finds that the improvements to the modest sized dwelling will be an enhancement to the function of the dwelling by the residents. The Board further finds that the 'home office' shown on the second floor above the attached garage proposed herein does meet the criteria of a bedroom and although representation stated that a three-bedroom septic is proposed, the plans show a five (5) bedroom septic system for subject property. Also noted in the file is verification from the Engineer that a five-bedroom septic system is proposed. If in fact the plans are correct – by verification from the Board of Health as a five-bedroom system - the 'home office' will be allowed to remain as shown; and in the event the Board of Health approves and verifies a three-bedroom septic system – the 'home office' will then be conditioned to have a cased opening with the return removed (see conditions).

The Board finds that the response to the Board of Appeals' request for information on the basement space was never submitted to the file and there was no testimony given at the hearing as to what is existing in said basement. The Board further finds that a condition will be made that there shall be no bedroom or sleeping accommodations created in the basement space of the dwelling.

In addition to the above findings, the Board finds that the proposed additions to the existing pre-existing nonconforming single-family 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 additions as the nonconforming side yard setback will be eliminated, the front yard setback will be slightly improved and the lot coverage is in compliance with the bylaw.
- B. The site is suitable for the proposed use as the property is zoned residential and will remain as a single-family dwelling use through this special permit approval.
- C. There will be no impact on traffic flow and safety even with the increase of one (1) bedroom; and there is no change proposed to 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. The existing cesspool(s) will be removed and new Title V septic system will be before the Board of Health for approval prior to the 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.

G. The proposed additional to the existing 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 additions to the pre-existing nonconforming single-family dwelling 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 Hurrie 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 **5 – 0 to Grant the Special Permit** to John E. Gross and Pamela Twitchell-Gross (herein referred to as Applicant) under Section(s) 240-3 C. and 240-68 A. of the Code of Falmouth to construct a second floor addition, attached garage and an addition at the rear of the pre-existing nonconforming single-family dwelling on subject property known as 19 Cove Road, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of the existing deck, the 2nd floor and rear additions to the dwelling, the septic system, 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:
 - “Plan of Existing Conditions” prepared for John Gross for Lot 13, #19 Cove Road in North Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 9, 2017, stamped, signed and dated by Joel R. Kubick, PLS on May 22, 2017 and with a Board date ‘received’ stamp of May 26, 2017;
 - “Plan of Proposed Sewage Disposal System” prepared for John Gross for Lot 13, #19 Cove Road in North Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 2 dated May 9, 2017 – stamped and signed by Joel R. Kubick, PLS and Raul Lizardi-Rivera, PE and with a Board date ‘received’ stamp of May 26, 2017;
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2. The applicant shall submit to the Board of Appeals, verification from the Board of Health that there has been approval of a five-bedroom system prior to issuance of a building permit. Absence any verification from the Board of Health, the ‘home office’ on the second floor of the proposed plans shown on Drawing A1.2 noted in Condition #1 above, will show that the door is removed and the opening shall be a cased opening so as not to meet the criteria of a bedroom. A revised plan showing the cased opening shall be submitted to the Board of Appeals prior to the issuance of a building permit.
 3. There shall be no bedrooms or sleeping accommodations created within the basement space of subject dwelling.
 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 two 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:

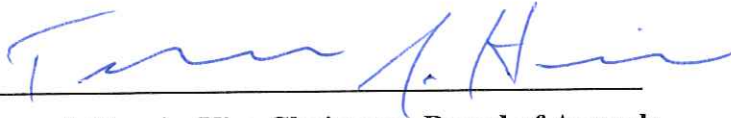
Special Permit Number: **040-17**

Applicant: **John E. Gross and Pamela Twitchell-Gross of Amherst, NH**

Subject Property: **19 Cove Road, North Falmouth, Massachusetts
Map 04, Section 05, Parcel 013A, Lot 013**

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, Vice Chairman, Board of Appeals

RECEIVED

JUL 31 2017

FALMOUTH TOWN CLERK

ADC 1232 pm
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.