

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 039-17

APPLICANT/OWNER: NINETY LOOP ROAD NOMINEE TRUST of Lexington, MA

SUBJECT PROPERTY: 90 Loop Road, West Falmouth, Massachusetts
Assessor's Map: Map 35, Section 02, Parcel 004, Lot 024

DEED/CERTIFICATE: Book 13831 / Page 310

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 24, 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 and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 90 Loop Road, West 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 Robert Dugan (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 Michael B. McGrath, P.E. and P.L.S. 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)

05/24/2017 Holmes and McGrath, Inc. submitted, on behalf of the applicant, an application, fee and four sets of site and architectural – existing and proposed plans

- 07/20/2017 Holmes and McGrath, Inc. submitted a copy of a letter to Falmouth Conservation Commission for Labarge Custom Building regarding ‘construction methodology’ for raze and reconstruction on subject property (sensitive area)
- 07/20/2017 Michael McGrath, P.L.S., P.E. submitted to the Board at the hearing a colored version of the plan that points out the line of Velocity Zone, AE16 zone and AE15 zone and the ‘limit of work’ area on subject property (visual tool used at hearing)

Letters/Referrals/E-mails from Town Departments

- 05/26/2017 Referral submitted to the file from the Planning Department staff with no comment
- 05/30/2017 Referral submitted to the file from the Director or Assessing with no comment
- 06/01/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/20/2017 Referral submitted to the file from the Conservation Commission that states: *Notice of Intent application before ConCom; hearing continued to 7/19/2017 for modifications.*
- 06/16/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Loop Road is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. 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. The design includes drywells for the roof and the existing driveway will remain dirt.*

Plans submitted by Applicant/Applicant’s Representative

“Plan of Land Showing Existing Conditions” prepared for Ninety Loop Road Nominee Trust Lot 24, #90 Loop Road in West Falmouth, MA, as drawn by Holmes and McGrath, Inc. on Sheet 1 of 1 dated May 12, 2017 – stamped and signed by Joel R. Kubick, P.L.S. with a Board date ‘received’ stamp of May 24, 2017;

“Plan of Proposed Sewage Disposal System” prepared for Ninety Loop Road Nominee Trust Lot 24, #90 Loop Road Sippewissett Falmouth, MA as drawn by Holmes and McGrath, Inc. on Sheet 1 of 2 dated May 12, 2017 – stamped and signed by Joel R. Kubick, P.L.S. and Raul Lizardi-Rivera, P.E. and with a Board date ‘received’ stamp of May 24, 2017;

“Plan (Construction Details) of Proposed Sewage Disposal System” prepared for Ninety Loop Road Nominee Trust Lot 24, #90 Loop Road in Sippewissett Falmouth, MA as drawn by Holmes and McGrath, Inc. on Sheet 2 of 2 dated May 12, 2017 – stamped and signed by Raul Lizardi-Rivera, P.E. and with a Board date ‘received’ stamp of May 24, 2017; and

“Harris Residence 90 Loop Road Falmouth, MA” as drawn by Hutker Architects consisting of Drawing EX101 ‘Existing Floor Plans’ dated 5/12/2017, Drawing A101 ‘First Floor Plan’ dated 5/12/2017, Drawing A102 ‘Second Floor Plan’ dated 5/12/2017, Drawing A201 ‘East and South Elevations’ dated 5/12/2017, Drawing A202 ‘West and North Elevations’ dated 5/12/2017, Drawing S100 ‘Foundation Plan’ not dated and Drawing A301 ‘Building Section A and Details’ dated 5/12/2017 – all with a Board date ‘received’ stamp of May 24, 2017.

Hearing:

Michael McGrath, P.L.S., P.E. with Holmes and McGrath, Inc. reviewed the existing and proposed site conditions and dwelling structure, as well as how, with limited area, the existing dwelling was to be removed and reconstructed. He explained the current dwelling structure is circa 1972, has three (3) bedrooms existing and three (3) bedrooms proposed. The existing nonconformity is that the structure has a setback of 14’ to the 4’ contour line off the waters of Buzzards Bay that requires a 50’ setback. The proposed reconstructed dwelling will meet the Velocity zone standards; the Board of Health approved a new ‘Hoot’ alternative sewage system with nitrification for the site; and Conservation Commission has reviewed it and closed their hearing for the proposed on July 19, 2017. He explained the Conservation Commission is requiring planting mitigation and a ‘limit of work’ for the proposed project.

Jim Cappuccino, AIA with Hutker Architects reviewed the design of the building and reviewed the elevations. He explained that the height of the dwelling will be 30’ to 34.95’ due to the sloping roof design.

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

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

Derek McDonald of 38 Place Road questioned the septic system component located in the driveway area and its setback as it requires 10’ and appears less than that and commented on the 34.95’ height of roof.

Lewis Stern of 49 Loop Road stated he is with the association, who have discussed the proposed plans and has a question on the phasing of the project.

Mr. McGrath referenced the letter submitted to the file from Labarge regarding the process of demolition and reconstruction on subject property. He also noted that the proposed septic system has a 5’ setback to property line of the driveway that required a variance from the Board of Health.

The Board discussed hours of construction for proposed project. Mr. McGrath suggested an 8:00 AM start time Monday through Saturday with no work conducted on site on Sundays.

Member Van Keuren made a motion to close the hearing. Member Murphy 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 90 Loop Road in West Falmouth contains 16,851 square feet of Residential B zoned land that is located within the Natural Heritage & Endangered Species Program for both Estimated and Priority. The subject property has salt marsh and wetlands on said property with a limited building area and 'limit of work'. The subject property is within three flood zones: Velocity Zone, AE16 and AE15. The applicant applied under Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has a nonconforming setback of 14' to the 4' contour line off the waters of Buzzards Bay which requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The applicant is proposing to raze the existing dwelling structure and reconstruct a new dwelling in accordance with FEMA standards; the existing nonconforming setback of 14' to the 4' contour line of the waters off Buzzards Bay will remain the same. The existing dwelling has three (3) bedrooms and the proposed will remain as a three-bedroom (3) dwelling. The height of the dwelling will remain below the maximum of 35' pursuant to Section 240-70 of the Code of Falmouth. Testimony by the applicant was the Board of Health has approved a 'Hoot Merk' denitrification septic system for subject property.

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 raze and reconstruction of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board finds that the only existing nonconformity is the 14' setback to the 4' contour line off the waters of Buzzards Bay, which will remain as a 'no less' than 14' setback and that no new nonconformities will be created through the reconstruction of the dwelling. Furthermore, the Board finds that the plans proposed will be an improvement of a dwelling as well as an improvement to the sensitive area that surrounds the proposed dwelling on subject property.

The Board finds that the plans show that the applicant has taken care to minimize disturbance of the sensitive area on subject property and has submitted a 'Construction Methodology' showing the phasing of removing existing dwelling from the property, reconstructing a new dwelling and installation of a new denitrification septic system with a three-bedroom capacity. The Board further finds through testimony by the applicant's representative (Mr. McGrath) that suggested construction times shall start no earlier than 8:00AM Mondays through Saturdays with no work conducted on Sundays. Furthermore, the Board finds that the applicant shall work with the contractor in insuring that no vehicles or equipment will be parked or staged within the paved public way of Loop Road.

The Board finds that the height of the dwelling will not exceed 35' in height in accordance with Section 240-70 of the Code of Falmouth. The Board further finds that the first floor of the dwelling will be at site elevation 20.5' in accordance with flood zone regulations.

The Board finds through testimony by the applicant's representative that the Conservation Commission has reviewed the proposed project and mitigation plantings proposed and closed the hearing for said project on July 19, 2017; and the applicant is awaiting an approval and 'Order of Conditions'.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the 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 reconstruction as there will be no new nonconformities created and the one existing nonconforming setback will remain as is.

B. The site is suitable for the proposed use as the property is zoned residential and a single-family dwelling use will remain with no additional uses on said property.

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. A new three-bedroom Title V septic system with denitrification will be installed to service proposed reconstructed three-bedroom dwelling. The Board of Health will be required to sign off on system prior to issuance of a building permit from the Building Department.

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 service lines as there was no referral submitted to the file from the Water Department.

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 raze and reconstruction of a three-bedroom 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 Murphy 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 a Special Permit** to Ninety Loop Road Nominee Trust (herein referred to as Applicant) under Section(s) 240-3 C. and 240-68 D. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 90 Loop Road, West Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing dwelling, construction of proposed three-bedroom dwelling, septic system, setbacks, lot coverage, height of proposed dwelling and use of proposed dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plan of Land Showing Existing Conditions” prepared for Ninety Loop Road Nominee Trust Lot 24, #90 Loop Road in West Falmouth, MA, as drawn by Holmes and McGrath, Inc. on Sheet 1 of 1 dated May 12, 2017 – stamped and signed by Joel R. Kubick, P.L.S. with a Board date ‘received’ stamp of May 24, 2017;
 - “Plan of Proposed Sewage Disposal System” prepared for Ninety Loop Road Nominee Trust Lot 24, #90 Loop Road Sippewissett Falmouth, MA as drawn by Holmes and McGrath, Inc. on Sheet 1 of 2 dated May 12, 2017 – stamped and signed by Joel R. Kubick, P.L.S. and Raul Lizardi-Rivera, P.E. and with a Board date ‘received’ stamp of May 24, 2017;
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2. There shall be no more than three (3) bedrooms allowed on subject property.
3. While under razing and reconstruction of the dwelling approved herein, there shall be no work conducted on site prior to 8:00AM Mondays through Saturdays and no work conducted whatsoever on Sundays.
4. During the razing and reconstruction of the dwelling approved herein, the staging and parking of any vehicles/equipment shall not be within the paved public way on Loop Road.
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 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: **039-17**

Applicant: **NINETY LOOP ROAD NOMINEE TRUST of Lexington, MA**

Subject Property: **90 Loop Road, West Falmouth, Massachusetts
Map 35, Section 02, Parcel 004, Lot 024**

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



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.