

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 053-17

APPLICANT: THORNTON LEWIS of Falmouth, MA

OWNER: Rosemary Rudloff of Provincetown, MA

SUBJECT PROPERTY: 56 Hamlin Avenue, Falmouth, Massachusetts
Assessor's Map: Map 38A, Section 05, Parcel, 070, Lot 002

DEED/CERTIFICATE: Book 8966 / Page 264

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 22, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-68 D. and 240-69E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling that will exceed the 20% maximum lot coverage by structures on subject property known as 56 Hamlin Avenue, 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 August 10, 2017.
4. The public hearing was terminated on August 10, 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 Attorney 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

08/09/2017 Received letter dated August 5, 2017 from John & Julie Karas of 84 Hamlin Avenue stating support of the proposed raze and reconstruct project

- 08/09/2017 Received letter dated August 2, 2017 from Camille and Barry Beale of 69 Hamlin Avenue stating support of the proposed raze and reconstruct project
- 08/10/2017 Letter submitted at the hearing by Attorney Klauer from Barry and Marilyn O'Neil of 70 Hamlin Avenue stating support of the proposed project

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

- 08/04/2017 Attorney Klauer submitted a letter dated August 4, 2017 notifying the Board of his representation of the applicant; the letter also gave a narrative of the proposed project relative to zoning
- 08/04/2017 Attorney Klauer submitted lot coverage/bulk calculations for proposed project
- 08/09/2017 Attorney Klauer submitted a letter dated August 8, 2017 with attachments: letters of authorization of representation and two letters of support noted herein

Letters/Referrals/E-mails from Town Departments

- 06/22/2017 Referral submitted to the file from Planning Department staff with no comment
- 06/23/2017 Referral submitted to the file from Conservation Commission that notes: *Notice of Intent under review by ConCom; closed on 6/14, likely to be voted 6/28/17.*
- 06/27/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/28/2017 Referral submitted to the file from Director of Assessing with no comment
- 07/11/2017 Referral submitted to the file from Town Engineering Department with standard comments that include: *The plans have engineering components on them but are only endorsed by a Land Surveyor, a Professional Engineer should also endorse these plans. Please affix house number visible from the street on the new house.*
- 08/04/2017 ZBA submitted a copy of the "Order of Conditions" approval by Conservation Commission for proposed project

Plans submitted by Applicant/Applicant's Representative

"Plan of Existing House at 56 Hamlin Falmouth, Massachusetts" prepared for Thornton Lewis as drawn by BSS Design, Inc. consisting of two (2) pages showing Basement and First Floor Plan – dated June 14, 2017 with a Board date 'received' stamp of June 22, 2017;

"Plot Plan – Existing House" prepared for Thornton Lewis 56 Hamlin Avenue, Falmouth Massachusetts as drawn by BSS Design, Inc. on a plan dated April 25, 2017 with final revision of June 23, 2017 – stamped and signed by Thomas J. Bunker, P.L.S. and with a Board date 'received' stamp of June 23, 2017;

“Plot Plan – Proposed House at 56 Hamlin Avenue Falmouth, Massachusetts” prepared for Thornton Lewis as drawn by BSS Design, Inc. on a plan dated April 25, 2017 with a final revision date of June 22, 2017 – stamped and signed by Thomas J. Bunker, P.L.S. and with a Board date ‘received’ stamp of June 23, 2017; and

“Renovations to: Lewis Residence 56 Hamlin Avenue, Falmouth, MA” drawn by Giampietro Architects consisting of Sheet No. A1 ‘Elevations’ dated 3/27/17, revised 6/22/2017, Sheet No. A2 ‘1st & 2nd Floor Plans’ dated 3/27/17 and Sheet No. A3 ‘Basement & Foundation Plan’ dated 3/27/17 with a final revision date of 6/22/2017 – all Sheets have a Board date ‘received’ stamp of June 23, 2017.

Hearing:

Attorney Klauer reviewed the existing one-story, 1,000 square foot dwelling that has a height of 14’ and two (2) bedrooms on an 8,500 square foot lot. The applicant proposes to raze the existing dwelling and construct a 1.5 story, three (3) bedroom dwelling with a height of 28.1’. The existing lot coverage by structures is 11.64%, the proposed lot coverage will exceed the 20% maximum lot coverage by structures at 23.9%. The existing dwelling has a nonconforming setback of 33’ to the waters of Weeks Pond that requires a 50’ setback (Section 240-68 D.). The 33’ setback to the waters of Weeks Pond will be improved to 43’ through this special permit; all other setbacks will be in compliance with Code. Attorney Klauer reviewed the calculations he submitted for the neighborhood relative to bulk and lot coverage. The septic system will be upgraded to accommodate the third bedroom proposed.

The Board discussed plans with Attorney Klauer and asked about the shed on the property line, basement plans and trees to be removed. Attorney Klauer noted that the ownership of the shed is in question and if it is found to belong to subject property, it will be removed. He said some trees will have to come down but Conservation Commission is requiring mitigation plantings. He noted that the basement at present will be unfinished.

Chairman Foreman 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 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 56 Hamlin Avenue in Falmouth contains 8,500 square feet of Residential C zoned land that is located within the Siders Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. (setback to waters of Weeks Pond), Section 240-68 D. (setback nonconforming to waters of Weeks Pond) and 240-69 E. (exceeding lot coverage by structures

maximum of 20% by right) of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming one-story, two-bedroom dwelling and reconstruct a 1.5 story, three-bedroom dwelling. The existing dwelling has a nonconforming setback of 33' to the waters of Weeks Pond that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth; the setback will be improved from 33' to 43' through this special permit approval. The lot coverage by structures is currently in compliance with Section 240-69 A. of the Code of Falmouth at 11.64% which is less than the maximum of 20% allowed by right. The proposed plan will increase the lot coverage to 23.9%, exceeding the 20% maximum by right. However, the applicant applied under Section 240-69 E. of the Code of Falmouth that allows the Board of Appeals, through special permit, to exceed the 20%, but not to exceed 25%, if the Board finds allowable after consideration of criteria set forth in said section. The existing septic system will be replaced with a Title V three-bedroom capacity system. The plan shows proposed drywells to maintain stormwater runoff on site. There is a proposed deck at the rear of the dwelling that is included within the lot coverage calculations.

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 reconstruct of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed plan will improve the nonconforming setback to the waters of Weeks Pond from 33' to 43' and that there will not be any new nonconforming setbacks through this reconstruction. Furthermore, the Board finds that the proposed reconstructed dwelling appears to be a modest design and will greatly improve and enhance the utilization of the property for the residents.

Section 240-69 of the Code of Falmouth "Maximum lot coverage." – sub-section E. requires a special permit from the Board of Appeals to exceed the 20% maximum lot coverage by structures on Residential B, C and Agricultural B zoned land up to 25% after the Board has considered the size and height of the proposed relative to the size and height of structures in the neighborhood, if there are any shadow effects from the proposed to adjacent property, if the proposed impacts any view or vistas from a public way and if the proposed has any effect of nitrogen on a coastal embayment.

The Board finds that relative to Section 240-69 E. of the Code of Falmouth that the proposed is in keeping with the general size and height of other structures in the general vicinity of subject property (see lot coverage/bulk calculations submitted), that the proposed does not create shadowing on adjacent property, that the proposed does not impact a view or vista from a public roadway and that there is no effect of nitrogen on a coastal embayment through the proposed reconstruction.

The Board finds that the existing shed that is on the property line of subject property may or may not belong to the owner of subject property – ownership at the time of this hearing is unknown; and that in the event the shed is found to be on subject property and owned by current owner, then said shed will be removed from subject property by the applicant.

The Board finds through testimony by the applicant's representative that the basement proposed is unfinished, but that the applicant would prefer no restrictions be conditioned on the basement. The Board further finds through testimony by the applicant's representative that the applicant is amenable to a condition that no bedroom or sleeping accommodations be created within the basement area.

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 raze and reconstruction as the nonconforming setback to the waters of Weeks Pond will be improved from a 33' setback to a 43' setback and that there will be no new nonconforming setbacks created. The increase of lot coverage by structures is herein approved as shown on the plans pursuant to Section 240-69 E. of the Code of Falmouth.

B. The site is suitable for the proposed use as a reconstruction single-family dwelling as the property is zoned residential and will be maintained through this special permit approval of a single-family three-bedroom dwelling.

C. There will be minimal impact on traffic flow and safety due to the increase of one (1) bedroom within the dwelling on subject property; and the plans show that there will be 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. The sewage disposal system is being upgraded and proposed as a three-bedroom system that will require approval from 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 possible updating of the water service as the Board of Appeals did not receive a referral 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 reconstructed dwelling at 56 Hamlin Avenue in Falmouth 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 Potamis made a motion to Grant the Special Permit with conditions. Member Hurrie 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 Thornton Lewis (herein referred to as Applicant) under Section(s) 240-3 C., 240-68 D. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling that will exceed the 20% maximum lot coverage by

structures on subject property known as 56 Hamlin Avenue, Falmouth, MA. This special permit shall be subject to the following conditions:

1. The razing of the existing two-bedroom one-story dwelling, construction of a 1.5 story three-bedroom dwelling, height of the proposed dwelling, all setbacks, lot coverage 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 House at 56 Hamlin Falmouth, Massachusetts” prepared for Thornton Lewis as drawn by BSS Design, Inc. consisting of two (2) pages showing Basement and First Floor Plan – dated June 14, 2017 with a Board date ‘received’ stamp of June 22, 2017;
 - “Plot Plan – Existing House” prepared for Thornton Lewis 56 Hamlin Avenue, Falmouth Massachusetts as drawn by BSS Design, Inc. on a plan dated April 25, 2017 with final revision of June 23, 2017 – stamped and signed by Thomas J. Bunker, P.L.S. and with a Board date ‘received’ stamp of June 23, 2017;
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2. There shall be no more than three (3) bedrooms allowed on subject property.
3. If the shed located on property line of subject property is owned by current owner or applicant, the shed shall be removed within ninety (90) days of a building permit being issued for the reconstruction of existing dwelling on subject property as approved herein.
4. There shall be no bedrooms or sleeping accommodations created within the basement of the proposed dwelling approved herein.
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: **053-17**

APPLICANT: **THORNTON LEWIS of Falmouth, MA**

OWNER: **Rosemary Rudloff of Provincetown, MA**

SUBJECT PROPERTY: **56 Hamlin Avenue, Falmouth, Massachusetts**
Assessor's Map: **Map 38A, Section 05, Parcel, 070, Lot 002**

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.

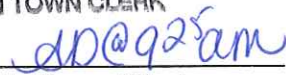


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

AUG 18 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.