

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 048-17

APPLICANT/OWNER: LORRAINE LUCHNER of Falmouth, MA

SUBJECT PROPERTY: 15 Pennsylvania Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B, Section 18, Parcel 013, Lot 015

DEED/CERTIFICATE: Book 15833 / Page 177

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 16, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 15 Pennsylvania 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 3, 2017.
4. The public hearing was terminated on August 17, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, 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 Geoffrey S. Nickerson of Oppenheim & Nickerson 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

08/03/2017 Letter submitted to the file from Regina Walsh Wagner of 11 Pennsylvania Avenue dated August 3, 2017 requesting large tree between properties remain

- 08/03/2017 Letter submitted to the file by Attorney Nickerson from Deborah A. Farale of 16 Pennsylvania Avenue dated August 3, 2017 stating no objection to the proposed plans for 15 Pennsylvania Avenue
- 08/03/2017 E-mail from John Vrettas to Attorney Nickerson dated July 27, 2017 stating support of the proposed project for 15 Pennsylvania Avenue

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

- 06/16/2017 James Bustamante of Longfellow Design-Build submitted, on behalf of the applicant, an application, fee, photos of existing dwelling and site and architectural plans for hearing process
- 07/27/2017 Geoffrey S. Nickerson submitted a letter dated July 27, 2017 to the Board of Appeals with Exhibits A through H attached that contained historical and other information relative to subject property and proposed plans, including septic system info from 1998 noting a four (4) bedroom dwelling and photos of dwellings and commercial entities in the general vicinity
- 07/28/2017 E-mail from applicant (Luchner) to Attorney Nickerson with Zoning Administrator copied to inform ZBA that applicant is authorizing Attorney Nickerson to represent her (applicant) in front of the Board of Appeals
- 08/11/2017 Letter submitted to the file from Attorney Nickerson to Board of Appeals dated August 10, 2017 with attached Lot Coverage/Bulk Calculation worksheet
- 08/16/2017 Letter submitted to the file from Attorney Nickerson to Board of Appeals dated August 16, 2017 with attached Revised Lot Coverage/Bulk Calculation worksheet

Letters/Referrals/E-mails from Town Departments

- 06/22/2017 Referral submitted to the file by Planning Department staff with no comment
- 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 that states: *Includes lots 15 and 17*
- 07/11/2017 Referral submitted to the file from Town Engineering Department with standard comments
- 07/18/2017 Referral submitted to the file from Conservation Commission that states: *A Notice of Intent shall be reviewed by ConCom on 8/2/17 hearing: located in Falmouth V-zone*
- 08/03/2017 Email from Board of Health Agent Carignan to Zoning Administrator regarding inspection of dwelling found to have four (4) existing bedrooms

Plans submitted by Applicant/Applicant's Representative

“Raze & Replace Existing Dwelling 15 Pennsylvania Avenue in Falmouth, MA 02540” as drawn by Cape & Islands Engineering dated June 7, 2017 with a final revision date of 6/15/2017 – plan is stamped, signed and dated by Matthew C. Costa, P.L.S. on 6/16/2017 and has a Board date ‘received’ stamp of June 16, 2017;

“15 Pennsylvania Ave – Existing 1st Floor Plan” – hand drawn with a Board date ‘received’ stamp of June 23, 2017;

“15 Pennsylvania Ave – Existing 2nd Floor Plan” – hand drawn with a Board date ‘received’ stamp of June 23, 2017; and

“Proposed Residence at 15 Pennsylvania Ave. Falmouth, MA” prepared for Bruce & Lorraine Luchner by Mark S. McCarthy Longfellow Design Build consisting of Drawing A-1 ‘First Floor Plan’ dated 31 July 2017 with a Board stamp of Aug. 3, 2017, Drawing A-2 ‘Second Floor Plan’ dated 31 July 2017 with a Board stamp of Aug. 3, 2017, Drawing A-3 ‘Third Floor Plan and Roof Pitch Plan’ dated 31 July 2017 with a Board stamp of Aug. 3, 2017, Drawing A-4 ‘Exterior Elevations’ dated 1 February 2017 with a Board stamp of June 16, 2017 and Drawing A-5 ‘Exterior Elevations’ dated 1 February 2017 and with a Board stamp of June 16, 2017.

Hearing:

Attorney Nickerson reviewed the existing property and structure noting that the structure is circa 1928 and has a nonconforming setback of 10.8’ to the front yard property line. The existing dwelling is two-story, the proposed dwelling is 2.5 stories. The lot coverage by structures is nonconforming at 35.5% (exceeding 20% by right maximum) and total lot coverage is nonconforming at 62.7% (exceeds 40% maximum). The footprint of the proposed dwelling will be slightly smaller so the lot coverage will be decreased; the coverage by structure will still be nonconforming but improved; and the total lot coverage will also be slightly decreased and remain nonconforming. The dwelling will remain a four (4) bedroom dwelling as existing. The height of the existing dwelling is approximately 24’, the proposed will be 34.11’, which is below the 35’ maximum height allowed. The detached garage will remain as existing.

The Board discussed plans with Attorney Nickerson, asking the use of the third level, elevation of first floor, etc. Attorney Nickerson addressed the Board’s concerns and informed the Board that the third level will be an observatory and will not be used as a bedroom and the lower level of the dwelling will be used for storage and will not have any habitable space.

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

The Board consensus was that they would like to see bulk and lot coverage calculations for comparison with general area. It was noted that there are commercial properties nearby and discussion over whether those structures should be included in the neighborhood calculations.

Member Van Keuren made a motion to continue the hearing to August 17th at 6:30 PM. Member Bielan seconded the motion. Motion carried 5 – 0.

Hearing: August 17, 2017

Attorney Nickerson reviewed the bulk/lot coverage calculations he submitted to the file as revised on August 16, 2017. The Board discussed the calculations with Attorney Nickerson relative to the surrounding neighborhood. Attorney Nickerson submitted a photo showing properties in the immediate vicinity of subject property as a reference of height and bulk – two of the four dwellings are 2.5 stories and similar to proposed reconstruction of subject dwelling. Attorney Nickerson also submitted a Lot Coverage/Bulk Calculation Worksheet on properties recently approved by the Board of Appeals noting that 7 of the 6 properties were approved to be reconstructed as 2.5 story dwellings; and allowed lot coverage by structures under Section 240-69 A. and E. of the Code of Falmouth.

Board members discussed the proposed project based on new information submitted.

Member Potamis 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 15 Pennsylvania Avenue contains 8,242 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming two-story, four-bedroom single-family dwelling. The existing dwelling structure has a nonconforming setback of 10.8' to the front yard property line off Pennsylvania Avenue that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. Lot coverage by structures is nonconforming at 35.5% as it exceeds the maximum allowed in a residential zoned district of 20% pursuant to Section 240-69 A. of the Code of Falmouth; the total lot coverage by structures, parking and paving is also nonconforming at 62.7% as it exceeds the 40% maximum allowed. The proposed reconstructed dwelling will slightly decrease the nonconforming lot coverage by structures to 34.0%; and will decrease the total lot coverage to 56.9%. The dwelling will remain a four (4) bedroom dwelling with no increase in the number of bedrooms through this special permit. The existing detached garage structure, that will remain unchanged through this special permit, is also nonconforming as it is less than the required 10' setback to the side and rear property lines pursuant to Section 240-68 B. of the Code of Falmouth.

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 raze and reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the lot

coverage on subject property will be decreased and will be a slight improvement to the nonconforming lot coverage on subject property; and the nonconforming front yard setback of 10.8' will remain the same and not be increased through this special permit approval. Furthermore, the Board finds that there will be no new nonconformities created on subject property through this special permit approval.

The Board finds through the Lot Coverage/Bulk Calculations Worksheet submitted by Attorney Nickerson that the proposed reconstruction of the dwelling will not increase the bulk factor of said dwelling beyond what is comparable in the neighborhood currently (including commercial properties) and that the proposed reconstructed dwelling will maintain the ranking of bulk among residential structures as it exists within said neighborhood.

The Board finds that the subject dwelling is within a flood zone and is therefore required to meet flood zone regulations. The proposed dwelling will be 7' above the mean grade to meet the requirements of flood plain regulations – the overall height of the proposed dwelling will be 34.11' from mean grade. The Board further finds that the proposed reconstructed dwelling height will be in compliance with Section 240-70 of the Code of Falmouth. Furthermore, the Board will require verification of said height, setbacks and lot coverage post construction.

The Board finds that the proposed reconstruction of the subject dwelling is in keeping with the character of the neighborhood.

The Board finds that the proposed dwelling will have four (4) bedrooms, same count as the existing dwelling.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the 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 as the proposed reconstruction plans show that the nonconforming lot coverage will be decreased, there will be no increase in the existing nonconforming front yard setback and the detached garage structure will remain as existing with no increase in the nonconforming setbacks to the side and rear property line.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single-family dwelling through approval of 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 is in place and signed off as a four bedroom system by the Board of Health according to communication from the Board of Health that was submitted to the file for Board of Appeals review.

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 as the Board of Appeals did not receive a referral from the Water Department regarding any possible updating of said service.

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 the pre-existing nonconforming single-family dwelling at 15 Pennsylvania Avenue 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 Van Keuren seconded the motion. Motion carried 4 – 1 with Member Bielan in opposition.

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 **4 – 1 to Grant the Special Permit** to Lorraine Luchner (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 15 Pennsylvania Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the existing two-story four-bedroom dwelling, the reconstruction of a 2.5 story four-bedroom dwelling, all setbacks, lot coverage, height of reconstructed dwelling and use of spaces within the subject dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Raze & Replace Existing Dwelling 15 Pennsylvania Avenue in Falmouth, MA 02540” as drawn by Cape & Islands Engineering dated June 7, 2017 with a final revision date of 6/15/2017 – plan is stamped, signed and dated by Matthew C. Costa, P.L.S. on 6/16/2017 and has a Board date ‘received’ stamp of June 16, 2017;
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stamp of Aug. 3, 2017, Drawing A-4 'Exterior Elevations' dated 1 February 2017 with a Board stamp of June 16, 2017 and Drawing A-5 'Exterior Elevations' dated 1 February 2017 and with a Board stamp of June 16, 2017.

2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no bedrooms or sleeping accommodations allowed within the lower level of subject dwelling – regulations require no habitable space.
4. The applicant shall submit to the Board of Appeals an as-built plan post construction of dwelling and all appurtenances. The as-built plan shall verify height of reconstructed dwelling, all setbacks and lot coverage on subject property. The as-built shall be submitted to this Board within thirty (30) days of completion of exterior of structure (including steps, decks, etc.).
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: **048-17**

Applicant: **LORRAINE LUCHNER of Falmouth, MA**

Subject Property: **15 Pennsylvania Avenue, Falmouth, Massachusetts
Map 46B, Section 18, Parcel 013, Lot 015**

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 1 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

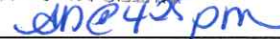


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

AUG 29 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.