

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 066-17

APPLICANT/OWNER: KURT P. STIFFEL and DEBRA R. STIFFEL of Falmouth, MA

SUBJECT PROPERTY: 41 Nashawena Street, West Falmouth, Massachusetts
Assessor's Map: Map 24A, Section 07, Parcel 007, Lot 000B

DEED/CERTIFICATE: Book 30468 / Page 253

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 4, 2017, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 41 Nashawena Street, 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 September 28, 2017.
4. The public hearing was closed on September 28, 2017, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren, Member Paul Murphy 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 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)

09/20/2017 Holmes and McGrath, Inc. submitted Bulk Coverage Analysis for proposed project.

Letters/Referrals/E-mails from Town Departments

- 08/07/2017 Referral submitted to the file from the Planning Department with no comment.
- 08/10/2017 Referral submitted to the file from the Director of Assessing with no comment.
- 08/10/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment.
- 08/21/2017 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. Nashawena Street is a Public right of way in this area. Alterations are proposed to the right of way that will require filing a permit with the Engineering Division. Reinforced turf is acceptable for a driveway, however, the first 5 feet from the road surface is required to be a hard surface (asphalt, concrete, cobbles, pavers, etc.), and the first 1 foot is required to be asphalt. The connections to public utilities will require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways. Drywells are proposed for the roof. Please make sure the house number is posted in a location visible from the street.*
- 09/06/2017 Referral submitted to the file from Conservation Commission that stated: *Order of Conditions (DEP25-4320) was heard for house construction; due to be issued in the next week or two (9/13 or 9/20). Note: "Order of Conditions" was submitted to the file September 26, 2017.*

Plans submitted by Applicant/Applicant's Representative

- "Plan of Existing Conditions" prepared for Kurt P. & Debra R. Stiffel #41 Nashawena Street in Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated July 31, 2017 as Sheet 1 of 1 stamped and signed by Joel R. Kubick, P.L.S. and with a Board date 'received' stamp of August 4, 2017;
- "Plan of Proposed Sewage Disposal System" prepared for Kurt P. & Debra R. Stiffel #41 Nashawena Street in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 2 dated July 31, 2017 – plan is stamped and signed by Joel R. Kubick, P.L.S. and Timothy M. Santos, P.E. and with a Board date 'received' stamp of August 4, 2017;
- "Stiffel - #41 Nashawena Street Existing 1st and 2nd Floor Plan' – computer generated – 1 Sheet with a Board date 'received' stamp of August 4, 2017 and photos of existing dwelling with Board date 'received' stamp of August 4, 2017;
- "Construction Details of Proposed Sewage Disposal System" prepared for Kurt P. & Debra R. Stiffel #41 Nashawena Street in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 2 dated July 31, 2017 – plan is stamped by Timothy M. Santos, P.E. and with a Board date 'received' stamp of August 4, 2017; and
- "The Stiffel Residence 41 Nashawena St. Falmouth, Massachusetts" architectural plans drawn by Rescom Architectural, Inc. and consisting of Drawing A-101 dated 7/27/2017

‘First and Second Floor Plans’, Drawing A-102 dated 7/28/2017 ‘Ground Level Plan’, Drawing A-103 dated 7/27/2017 ‘Front and Right Elevations’ and Drawing A-104 dated 7/27/2017 ‘Rear and Left Elevations’ – all with a Board date ‘received’ stamp of August 4, 2017.

Hearing:

Raul Lizardi-Rivera, P.E. reviewed the subject property noting that the existing 1.5 story, four-bedroom dwelling was constructed approximately in the 1950’s; the structure has a nonconforming setback of 19.1’ from the structure to the front property line off Nashawena Street that requires a 25’ setback; a nonconforming setback of 6.2’ from the structure to the northerly side yard property line that requires a 10’ setback; and lot coverage by structures at 21.3% which exceeds the 20% maximum allowed by right. There are two (2) existing cesspools on subject property that will be removed and a denitrification system installed. He explained that the subject property is within the velocity zone and the proposed reconstructed dwelling will meet FEMA regulations (elevation of first floor at 20’). He reviewed the proposed four (4) bedroom dwelling reconstruction that will become compliant with all setback requirements and will have a slightly improved nonconforming lot coverage by structures. The height of the proposed dwelling will be 34.9’, which is slightly below the maximum height of 35’ allowed according to Code. The proposed has a garage on the ground level of the dwelling. It is noted that the Conservation Condition in its “Order of Conditions” is not allowing ‘break-away panels’ on this site so vehicles and storage will be seen from road way. Mr. Rivera briefly reviewed the ‘Neighborhood Bulk Coverage Analysis’ submitted for Board’s review that shows the bulk and lot coverage of the proposed reconstructed dwelling is within the mid-range of approximately 15 properties within the general area (see file).

Mr. Rivera addressed the referral from Engineering regarding the proposed reinforced turf driveway vs. the asphalt or pavers as suggested in the referral noting that Conservation Commission conditioned that the driveway remain pervious with no asphalt or concrete added to site except as stated in “Special Conditions’ of the “Order of Conditions” issued 9/20/2017.

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

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

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

Chairman Hurrie 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 41 Nashawena Street in West Falmouth contains 8,619 square feet of Residential B zoned land. The subject property is located within the West Falmouth Harbor Coastal Pond Overlay District and is in the Velocity (VE18) zone. The applicant applied under Section(s) 240-3

C. and 240-69 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. As existing the structure has a nonconforming setback of 19.1' to the front property line off Nashawena Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; a nonconforming setback to the northerly side yard property line of 6.2' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and lot coverage by structures exceed the 20% maximum allowed by right in a Residential B zone pursuant to Section 240-69 A. of the Code of Falmouth. The pre-existing 1.5 story, four-bedroom single-family dwelling is proposed to be razed and a two-story, four-bedroom single-family dwelling will be reconstructed. There are two (2) existing cesspools serving the current dwelling that will be removed and a new denitrification pressure dosing septic system installed (Note: Conservation Commission in its 'Order of Conditions' required a denitrification system for subject property). Elevation plans submitted show that the height of the proposed dwelling will be 34.9' which does not exceed the 35' height under Section 240-70 of the Code of Falmouth. The reconstructed dwelling, located within a Velocity (VE18) zone will meet the standard required by FEMA.

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.

Section 240-69 A. of the Code of Falmouth requires that lot coverage by structures in a residential zone shall not exceed 20% and that total lot coverage by structures, parking and paving shall not exceed 40%. A Special Permit may be granted by the Board of Appeals to allow lot coverage by structures up to, but not to exceed, 25% after consideration by the Board of any effects on the neighborhood as stated in said section.

The Board finds that at the 2002 April Annual Town Meeting the Town voted to reduce the maximum allowed lot coverage by structures from 35% to 20% with the addition of Section 240-69 E. of the Code of Falmouth allowing lot coverage by structures to be increased from 20%, not to exceed 25% after consideration by the Board of any effects on the neighborhood as stated in said section. The Board further finds that the subject property with the existing dwelling that is circa 1950's became nonconforming in its lot coverage by structures, which through the proposed application reviewed herein, will be the only remaining nonconformity on subject property.

The Board finds that the proposed raze and reconstruction of the 1.5 story, four-bedroom pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed reconstruction of the dwelling will cure the two (2) nonconforming setbacks (front and northerly side yard setbacks) and bring them into compliance pursuant to Sections 240-68 A. and B. of the Code of Falmouth. Furthermore, the Board finds that the existing nonconforming lot coverage by structures on subject property existing at 21.3% will be slightly improved to 21.1%.

The Board finds according to the 'Neighborhood Bulk Coverage Analysis' submitted to the file that the proposed two-story dwelling replacing the 1.5 story dwelling will not adversely impact the general neighborhood and will be in keeping with said neighborhood. The Board further finds that the proposed reconstructed dwelling will be an improvement to the property and will also improve the utilization of the dwelling for its residents.

The Board finds through testimony by the Applicant's representative that the project has been reviewed and approved by the Conservation Commission with an 'Order of Conditions' issued. The Board further finds through testimony by the Applicant's representative and a copy of the 'Order of Conditions' that was submitted to the file, that the Conservation Commission required the subject property to have a denitrification septic system installed and not to pave the driveway as requested in the referral from the Engineering Department. Furthermore, this Board finds that the subject property is within the jurisdiction of the Conservation Commission and the Board will acquiesce to the two issues stated herein regarding septic system and driveway materials.

The Board finds that the referral from the Town Engineering Department noted that the address of subject property should be posted so as to be seen from the roadway. The Board further finds that the Applicant should post the address of subject property so that it is clearly visible in the event of any need of safety or health emergency vehicles locating said property.

In addition to the above findings, the Board finds that the proposed project 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 of the four-bedroom single-family dwelling as the plans show to eliminate the two (2) nonconforming setbacks (front and side setback) and to slightly improve the nonconforming lot coverage by structures.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used as a four-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; the driveway location will be changed and will be constructed with grass pavers as required by the Conservation Commission in its 'Order of Conditions'.

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 existing cesspools on subject property will be removed and a denitrifying septic system will be installed pursuant to the Conservation Commission's 'Order of Conditions'.

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 there was no referral submitted to the file from the Water Department as to any upgrade required.

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 single-family dwelling located in a Velocity zone 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 Bielan 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 Kurt P. and Debra R. Stiffel (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming, four-bedroom, single-family dwelling on subject property known as 41 Nashawena Street, West Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the 1.5 story four-bedroom dwelling and construction of a two-story four-bedroom dwelling, all setbacks, height of dwelling structure, lot coverage and use of structure 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 Kurt P. & Debra R. Stiffel #41 Nashawena Street in Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated July 31, 2017 as Sheet 1 of 1 stamped and signed by Joel R. Kubick, P.L.S. and with a Board date ‘received’ stamp of August 4, 2017;
 - “Plan of Proposed Sewage Disposal System” prepared for Kurt P. & Debra R. Stiffel #41 Nashawena Street in Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 2 dated July 31, 2017 – plan is stamped and signed by Joel R. Kubick, P.L.S. and Timothy M. Santos, P.E. and with a Board date ‘received’ stamp of August 4, 2017;
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2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no accessory structures allowed on subject property without prior review and approval by the Board of Appeals or Zoning Administrator.
4. Prior to final inspection for completion of construction conducted by Inspectional Services, the Applicant shall submit to the Board of Appeals an ‘as-built’ plan verifying the height of

the newly reconstructed dwelling and lot coverage by structures. There shall be no occupancy of the dwelling allowed until the 'as-built' has been submitted to the Board of Appeals and approved by said Board.

5. Any deviation, no matter how minor, from plans submitted and approved herein by this Board, shall be submitted to the Board for its administrative approval or determination of modification requirement 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:

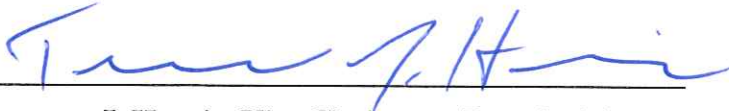
Special Permit Number: **066-17**

Applicant: **KURT P. STIFFEL and DEBRA R. STIFFEL of Falmouth, MA**

Subject Property: **41 Nashawena Street, West Falmouth, Massachusetts
Map 24A, Section 07, Parcel 007, Lot 000B**

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.

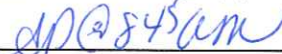


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

OCT - 6 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.