

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 062-17

APPLICANT/OWNER: CHRISTIE I. BAXTER, TRUSTEE of the Wyatt-Baxter
Falmouth Realty Trust No. One of Sudbury, MA

SUBJECT PROPERTY: 8 Settlers Path, Falmouth, Massachusetts
Assessor's Map: Map 47C, Section 02, Parcel 033F, Lot 012

DEED/CERTIFICATE: Certificate #196660, LC Plan 7568-D, Lot 10

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 27, 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. and B. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 8 Settlers Path, 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 14, 2017 and continued, by the request of the applicant, with no testimony, to October 5, 2017.
4. The public hearing was closed on October 5, 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 Thomas J. Bunker, P.L.S., with BSS Design, 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

09/11/2017 Letter submitted to the file sent U.S. Postal Service from Gary Vostok and Eileen Vostok, letter not signed, stating support of the proposed project

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

- 07/27/2017 Thomas J. Bunker, P.L.S. with BSS Design, Inc. submitted to the Board of Appeals, on behalf of the applicant, an application, fee, letter of authorization, site and architectural plans and photos of the existing dwelling
- 08/22/2017 BSS Design, Inc. submitted to the file a copy of the ‘Determination of Applicability’ approved by Conservation Commission on 8/16/2017

Letters/Referrals/E-mails from Town Departments

- 08/01/2017 Referral submitted to the file from the Planning Department with no comment
- 08/01/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/02/2017 Referral submitted to the file from the Director of Assessing noting: *includes Lots 10, 12 and 13*
- 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. Settlers Path is a Private right of way in this area. 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. Drywells are included 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 the Water Superintendent that states: *From GIS it appears there are multiple dwellings at this location. Two of which have water service already off a 2” main. New building should have no issue with water service as line as 10’ from all substructure septic.*

Note: Referrals were sent to: Assessors, Building, Conservation Commission, Board of Health, Fire Department, Planning, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant’s Representative

“Plot Plan – House Reconstruction and Subsurface Sewage Disposal System Upgrade” prepared for Christie Baxter 8 Settlers Path Falmouth, Massachusetts as drawn by BSS Design, Inc. ‘Site Plan 1 of 2’ dated July 26, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. – and has a Board date ‘received’ stamp of September 28, 2017;

“Plot Plan – House Reconstruction” prepared for Christie Baxter 8 Settlers Path Falmouth, Massachusetts as drawn by BSS Design, Inc. ‘SSDS Detail 2 of 2’ dated September 19, 2017 – plan is stamped and signed by Jeffrey Edwin Ryther, P.E. – and has a Board date ‘received’ stamp of September 28, 2017;

“Baxter 8 Settlers Path” – ‘Floor Plan/Elevations’ Existing House dated April 1981 and with a Board date ‘received’ stamp of July 27, 2017; and

“Baxter Residence 8 Settlers Path, Falmouth, MA Proposed Residence” as drawn by Sandbox Design Studio, LLC consisting of Drawing A100 ‘Crawl Space Plan’ final date of 9/19/2017, Drawing A101 ‘First Floor Plan’ final date of 9/19/2017, Drawing A102 ‘Second Floor Plan’ final date of 9/19/2017, Drawing A201 ‘North Elevation/West Elevation’ final date of 9/19/2017 and Drawing A202 ‘South Elevation/East Elevation’ final date of 9/19/2017 – all Drawings have a Board date ‘received’ stamp of September 28, 2017.

Hearing:

Thomas Bunker reviewed the existing site conditions noting that the existing two-bedroom, one-story dwelling is circa 1962 that has a nonconforming setback of 15’6” to the front property line off Settlers Path and a playhouse that has a nonconforming setback to the front property line of 12’4” – both require a 25’ setback (question of playhouse is in line with dwelling or less than 50’ to front property line for accessory structure); and the dwelling also has a nonconforming setback to the side yard of 9’9” which requires a 10’ setback. The existing dwelling has a height of 17’6” and lot coverage on subject property is currently 16.77%. There is an existing cesspool servicing the existing dwelling. The proposed dwelling will have an improved front yard setback of 19’4” and will eliminate the side yard nonconformity; and the playhouse will be relocated to the rear of the dwelling and will have a conforming setback of 10’1”. The lot coverage by structures for the proposed plans will be 19.91% which is in compliance with Code. The septic system will be upgrade and Conservation Commission has approved an RDA that is on file with this Board. The proposed two-story, two-bedroom dwelling will be elevated above the flood zone and will have a height of 29’4”. The drainage on subject property will be improved through installation of drywells around the property and a catch basin in the driveway area for roof runoff (See Plot Plan submitted).

The Board discussed plans with Mr. Bunker. It was noted that the ‘Den’ shown on the proposed plans on second floor has an 8’ opening so it does not appear as a bedroom. 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 Van Keuren made a motion to close the hearing. Member Bielan 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 8 Settlers Path in Falmouth contains 11,258 square feet of Residential C zoned land that is not located within any overlay district. In 2009 the applicant was granted an administrative approval to reconstruct the existing 20’ x 8’ into a 10’ x 16’ shed on subject property near the northeast corner of the dwelling. The applicant applied for this application under Section(s) 240-3 C.

and 240-68 A. and B. of the Code of Falmouth to raze the existing one-story, two-bedroom dwelling and reconstruct a two-story, two-bedroom dwelling with improved setbacks. The nonconforming front yard setback of the dwelling will be improved from 15'6" to 19'7"; the nonconforming 9'9" setback to the side yard property line will be eliminated; and the playhouse at the front of the dwelling will be relocated to the rear of the property with a conforming setback of 10'1". The lot coverage will be increased from 16.77% to 19.91%, which is below the 20% maximum allowed in a residential district under Section 240-69 A. of the Code of Falmouth.

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 and the relocation of the playhouse to the rear of the property will not be substantially more detrimental than what currently exists. The Board further finds that a nonconforming setback of the dwelling was eliminated, the nonconforming front yard setback was improved, the playhouse relocated to the rear of the property and the lot coverage is below the maximum percentage allowed according to Code and therefore the proposed project is an improvement to the site and to the utilization of the dwelling by its residents. Furthermore, the Board finds that there will be no impact on a view or vista and the architectural integrity of the proposed is in keeping with the neighborhood.

Section 240-68 A. and B. of the Code of Falmouth sets forth requirements for front yard setbacks (A.) and side and rear yard setbacks (B.) in this residential zoned district.

The Board finds that the proposed plans show improvement to the front yard setback and elimination of a nonconforming side yard setback as well as elimination of a nonconforming setback of an accessory structure in a front yard. The Board further finds that the plans show that the two sheds and the playhouse will remain on site and are reflected in the lot coverage by structures calculations on the plan. Furthermore, the Board finds that there was testimony by the applicant's representative that there is no habitable space within any of the sheds or playhouse on subject property.

The Board finds that the siting of the proposed dwelling location was based primarily on the desire to preserve the landscape features on subject property. The Board further finds according to testimony by the applicant's representative and according to plans submitted that the proposed dwelling, with a height of 29'4", will meet the requirements of the flood zone AE (Elev. 13). Furthermore, the Board finds that the existing cesspool will be eliminated and an approved septic system installed on subject property.

The Board finds through testimony by the applicant's representative that the basement will be used for storage only as required in the flood zone.

The Board finds that the proposed project has been before the Conservation Commission and received approval of a 'Determination of Applicability'. The Board further finds in the event of a change in the septic system, after review by Conservation Commission, the applicant will submit change to Board of Appeals under administrative approval.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the single-family dwelling and relocation of playhouse on subject property 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 dwelling as the nonconforming front yard setback will be improved, the nonconforming side yard setback will be eliminated and the lot coverage by structures will remain below the 20% maximum allowed according to Section 240-69 A. of the Code of Falmouth.

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 the 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; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is currently under review by the Conservation Commission and will also be reviewed by the Board of Health for compliance prior to the issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

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 single-family dwelling reconstruction 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 Bielan made a motion to Grant Special Permit #062-17 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 Christie I. Baxter, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. and 240-68 A. and B. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 8 Settlers Path, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing and reconstruction of the two-bedroom dwelling, relocation of the playhouse, septic system installation, all setbacks, lot coverage, height of dwelling and use of all structures on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – House Reconstruction and Subsurface Sewage Disposal System Upgrade" prepared for Christie Baxter 8 Settlers Path Falmouth, Massachusetts as drawn by BSS

Design, Inc. 'Site Plan 1 of 2' dated July 26, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. – and has a Board date 'received' stamp of September 28, 2017;

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2. The applicant shall submit an as-built plan, post construction, prior to the final inspection by the building department and/or Zoning Administrator, verifying all setbacks and lot coverage on subject property.
 3. In the event there is any change in the structures, location of structures or septic system due to review by the Conservation Commission, the applicant shall submit revised plans to the Board of Appeals for administrative approval prior to implementation of said plans.
 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: **062-17**

Applicant: **CHRISTIE I. BAXTER, TRUSTEE of the Wyatt-Baxter
Falmouth Realty Trust No. One**

Subject Property: **8 Settlers Path, Falmouth, MA
Map 47C, Section 02, Parcel 033F, Lot 012**

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.

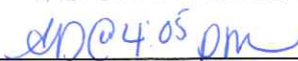


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

OCT 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.