

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 078-17

APPLICANT/OWNER: JAMES WICK CLEMENCE, TRUSTEE of JW Clemence Revocable Trust of Carver, MA

SUBJECT PROPERTY: 11 Sandy Lane, Hatchville, MA
Assessor's Map: Map 22 Section 07 Parcel 044 Lot 008K

DEED/CERTIFICATE: Book 29267 / Page 229

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 31, 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. and 240-68 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property know as 11 Sandy Lane, Hatchville, 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 October 19, 2017.
4. The public hearing was closed on October 19, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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

None

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

08/31/2017 Thomas Bunker submitted, on behalf of the applicant, an application, letter of authorization for representation, fee and copies of plans for Special Permit

Letters/Referrals/E-mails from Town Departments

- 09/05/2017 Referral submitted to the file from Water Superintendent noting: *Sandy Lane presently has a 6" pipe installed in 1977, property has a water service already with a meter pit. Meter will need to be relocated into the building, contact DPW H20.*
- 09/05/2017 Referral submitted to the file from the Director of Assessing with no comment
- 09/06/2017 Referral submitted to the file from the Conservation Commission that states: *No filing received to date: Shall require the filing of a Notice of Intent Application.*
- 09/11/2017 Referral submitted to the file from the Planning Department staff with no comment
- 09/12/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/03/2017 Referral submitted to the file from Town Engineering Department with standard comments and also noted: *Please post house number visible from the street.*

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

"Plot Plan – Existing House" prepared for James Clemence 11 Sandy Lane East Falmouth, Massachusetts drawn by BSS Design, Inc. – plan is dated August 30, 2017 with a final revised date of October 2, 2017 and is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date 'received' stamp of October 4, 2017;

"Plot Plan – House Reconstruction and Subsurface Sewage Disposal System Upgrade" prepared for James Clemence 11 Sandy Lane Falmouth, Massachusetts drawn by BSS Design, Inc. – plan is dated August 30, 2017 with a final revision date of October 4, 2017 and signed and stamped by Jeffrey Edwin Ryther, P.E. and Thomas Jackson Bunker, P.L.S. and has a Board date 'received' stamp of October 4, 2017;

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"Proposed New Construction Clemence Residence, 11 Sandy Lane, Falmouth, MA" as drawn by AAM Architecture & Design – consisting of Drawings: A 'Cover', A01 showing Front and Rear Elevations, A 02 showing Right and Left Elevations, A 03 showing Floor Plans, A 04 showing Foundation Plan, A 05 showing Cross Section, A 06 showing Framing Plan, A07 showing Elevation Perspective and A 08 showing Existing

Floor Plan – all Drawings have a date of 7/28/2017 and a Board date ‘received’ stamp of August 31, 2017.

Hearing:

Tom Bunker reviewed the existing 894 square foot dwelling with 11.97% lot coverage that is located on a 7,200 square foot lot (subject property) that fronts Jenkins Pond. The structure is nonconforming with a setback of 17.5’ to the front property line off Sandy Lane that requires a 25’ setback; and a 16’ setback from the bank of Jenkins Pond, which requires a 50’ setback. The existing dwelling has a height of 15’8” and is a two-bedroom dwelling due to being located in a Zone II overlay. There will be a septic system upgrade that was approved by the Board of Health. The proposed reconstructed dwelling will have a slightly improved setback of 18.4’ to the front property line, it will remain 16’ from the bank of Jenkins Pond, the lot coverage will be slightly increased to 12.15% and the dwelling will remain a two-bedroom dwelling and will have a height of 25’2”.

The Board discussed plans with Mr. Bunker. 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 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 11 Sandy Lane in Hatchville contains 7,500 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District, the Water Resource Protection Overlay District and Zone II. **Note:** The actual subject property is not within Zone II; however, Zone II is through Jenkins Pond up to the frontage of subject property. The applicant applied under Section(s) 240-3 C., 240-68 D. and 240-68 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming two-bedroom single-family dwelling on subject property. The subject dwelling has a nonconforming setback of 17.5’ to the front property line off Sandy Lane that requires a 25’ setback pursuant to Section 240-68 A. of the Code of Falmouth and a 16’ setback to the coastal bank of Jenkins Pond that requires a 50’ pursuant to Section 240-68 D. of the Code of Falmouth. Lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth. The applicant is proposing to raze the existing dwelling with a 15.8’ height and reconstruct it with a height of 25.2’. The dwelling will remain a two-bedroom dwelling. The proposed dwelling is substantially within the existing footprint of the existing dwelling with a slight increase to lot coverage by structure(s).

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 single-family dwelling on subject property will not be substantially more detrimental than what exists as it will be reconstructed substantially in the same footprint as the existing dwelling with a slight improvement to the nonconforming setback from the structure to the front property line off Sandy Lane. The Board further finds that the nonconforming setback to Jenkins Pond will be unchanged through the proposed raze and reconstruction as shown on the plans submitted and as presented at the hearing. Furthermore, the Board finds that the proposed reconstructed dwelling is the only structure proposed and that lot coverage from structure(s) on subject property is below the maximum percentage allowed pursuant to Section 240-69 A. The subject property is of smaller size than surrounding properties and the plan proposed herein was created so as not to adversely impact the existing nonconformities and the lot.

The Board finds that the proposed reconstructed dwelling will improve the utilization of the dwelling for its occupants. The Board further finds that the septic system will be upgraded, which will be an improvement to the subject property. Furthermore, the Board finds that the proposed reconstructed dwelling will remain a two-bedroom dwelling and will be substantially in the same footprint as the existing dwelling.

The Board finds that according to testimony by the applicant's representative, the residents previously parked in the roadway and that through the application to, and review by Conservation Commission, the proposed plan shows two (2) parking spaces created on the site. The Board further finds that the two parking spaces created on subject property will improve traffic flow on Sandy Lane.

The Board finds that the applicant applied under Section 240-68 A. of the Code of Falmouth that requires a 25' setback from a structure to a front property line and that the proposed reconstructed dwelling will slightly improve the nonconformity of this setback from 17.5' to 18.4' exists. The Board further finds that the applicant also applied under Section 240-68 D. of the Code of Falmouth that requires a 50' setback from a structure to the coastal bank of Jenkins Pond, which said nonconformity will remain the same and not be made more nonconforming. Furthermore, the Board finds based on the size and location of the lot, the proposed reconstructed dwelling and plans proposed are appropriate under a Special Permit.

The Board finds through testimony by the applicant's representative and an email from Conservation Commission office to the Board of Appeals, that the hearing before the Conservation Commission on this application was closed on October 11, 2017 and an 'Order of Conditions' to be issued approximately on November 1, 2017.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the two-bedroom single-family dwelling 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 as there will be a slight improvement to the nonconforming front yard setback and the slight increase in lot coverage by structures will remain below the 20% maximum allowed in a residential district (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 continue to be maintained as a single-family two-bedroom dwelling through this special permit approval.

C. There will be improvement to the traffic flow and safety of Sandy Lane as the plan shows two (2) parking spaces being created on site to eliminate the off-site parking that exists for subject property; there is no increase in the number of bedrooms on subject property; and there is no change in the location of the existing driveway on site proposed.

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. An upgrade of a Title V sewage disposal system is proposed for a two-bedroom dwelling. The Board of Health will review all plans for approval prior to 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 reconstructed two-bedroom single-family 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 Bielan 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 the Special Permit** to James Wick Clemence, Trustee (herein referred to as Applicant) under Section(s) 240-3 C., 240-68 D. and 240-68 A. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming two-bedroom single-family dwelling on subject property known as 11 Sandy Lane, Hatchville, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the existing dwelling, construction of the proposed two-bedroom dwelling, all setbacks, lot coverage, height of structure, septic system 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:
 - “Plot Plan – Existing House” prepared for James Clemence 11 Sandy Lane East Falmouth, Massachusetts drawn by BSS Design, Inc. – plan is dated August 30, 2017 with a final revision date of October 2, 2017 and is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date ‘received’ stamp of October 4, 2017;

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2. There shall be no more than two (2) bedrooms allowed on subject property.
 3. 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.
 4. The Applicant shall meet the requirements of the DPW Water Division.
 5. 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.)
 6. 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: **078-17**

Applicant: **JAMES WICK CLEMENCE, TRUSTEE of JW Clemence Revocable Trust
of Carver, MA**

Subject Property: **11 Sandy Lane, Hatchville, Massachusetts
Map 22 Section 07 Parcel 044 Lot 008K**

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

NOV - 1 2017

FALMOUTH TOWN CLERK

AD @ 11:40am

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.