

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 117-17
APPLICANT/OWNER: RAFFAELE DELSESTO and JENNIFER I. DELSESTO of Colchester, CT
SUBJECT PROPERTY: 13 Russell Road, Falmouth, Massachusetts
Assessor's Map: Map 39 Section 16 Parcel 036 Lot 035
DEED/CERTIFICATE: Book 23559 / Page 302
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 18, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to remove a portion of the dwelling, construct additions and a partial second floor to the pre-existing nonconforming single-family dwelling on subject property known as 13 Russell Road, 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 February 15, 2018.
4. The public hearing was closed on February 15, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate 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 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

None

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

None

Letters/Referrals/E-mails from Town Departments

12/20/2017 Referral submitted to the file from Planning Department staff with no comment

- 12/22/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 01/18/2018 Referral submitted to the file from Town Engineering Department with standard comments regarding drainage and runoff and with a note to clearly post house number on new façade.
- 12/26/2017 Referral submitted to the file from Director of Assessing with no comment

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

“Proposed Addition 13 Russell Road in Falmouth, Massachusetts” as drawn by Cape & Islands Engineering on a plan dated November 14, 2017 – Sheet No. 1 of 1 ‘Certified Plot Plan’ – plan is stamped and signed by Matthew C. Costa, PLS with a Board date ‘received’ stamp of December 18, 2017;

“Existing Conditions at 13 Russell Street Falmouth, MA” drawn by Longfellow Design-Build dated 7/5/2016 and consisting of EX-0 ‘Existing Basement Floor Plan’, EX-1 Existing First Floor Plan’, EX-3 ‘Existing Exterior Elevations’ and EX-4 ‘Existing Exterior Elevations’ – all with a Board date ‘received’ stamp of December 18, 2017;

“Jen & Ralph DelSesto 13 Russell Rd. Falmouth” as drawn by Longfellow Design-Build consisting of Drawing A1 ‘First Floor Plan’, Drawing A2 ‘Second Floor Plan’ and Drawing A5 – all Drawings dated 11/07/2017 and with a Board date ‘received’ stamp of December 18, 2017; and

“Lot Coverage Calculations 13 Russell Road” not dated or authored with a Board date ‘received’ stamp of December 18, 2017.

Hearing:

Attorney Klauer reviewed the existing site noting the nonconforming setbacks on subject property (front and side yards), existing pool and patio and shed. He reviewed the proposed noting that the applicants would like to renovate the first floor and create a master bedroom and office on second floor a portion of the dwelling at the west side of the dwelling will be removed, a proposed addition on the north façade (front) of approximately 10’ by 18.2’, enclose a 4.4’ x 3.6’ portion of existing covered front porch, remove a portion of existing front porch, construct an addition on the south façade of the dwelling – approximately 2.2’ by 15’ and construct a partial second floor. Attorney Klauer stated the existing dwelling is a three-bedroom dwelling and remain a three-bedroom dwelling through this special permit, although he is requesting no condition for a three-bedroom as the property is on Town sewer and has the ability to have a fourth bedroom. He reviewed the lot coverage by structures which is nonconforming at 24.7% by structures and 42.8% by structures, parking and paving. He noted that the lot coverage by structures will remain the same as there are portions of the dwelling that will be removed to accommodate the additions and not increase lot coverage. The shed at the southwesterly corner that is nonconforming with a 2’ setback to the rear property line of the lot will remain.

The Board discussed plans with Klauer including the addition of drywells. Attorney Klauer stated that the applicant would be amenable to drywells based on project engineer’s determination of the need and location.

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 13 Russell Road in Falmouth contains 7,650 square feet of Residential C zoned land that is not located within an overlay district. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth. The existing dwelling on subject property has a nonconforming setback to the front property line off Russell Road of 21.3' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth, a 9.2' setback from the pool to the easterly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth and lot coverage by structures and structures, parking and paving are nonconforming pursuant to Section 240-69 A. of the Code of Falmouth. The applicant applied under Section 240-69 E. which section allows the Board of Appeals to allow lot coverage to exceed the 20% maximum allowed by structures up to 25%; total lot coverage has no vehicle in which to exceed its maximum percentage of 40%. In this case the subject property is pre-existing nonconforming in that it currently exceeds the 20% by structures up at 24.7% and the total lot coverage is nonconforming at 43.5%. The Board finds that the applicant needs only to apply under Section 240-3 C. of the Code of Falmouth as the lot coverage is existing as nonconforming and there is no increase of said nonconforming lot coverage through this special permit application. The Board finds that the applicant is planning to renovate the first floor of the dwelling and relocate one of the three (3) existing bedrooms to a new second floor to create a master bedroom with bathroom and office space.

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 removal of a portion of the covered front porch and a portion of the westerly side of the dwelling and the four (4) additions to the dwelling as noted herein to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there is no increase to the two (2) nonconforming setbacks (front and side yard) and the nonconforming lot coverage by structures is not being increased through this special permit approval and the nonconforming lot coverage by structures, parking and paving will be slightly reduced from 43.5% to 42.8%. The Board further finds that the addition of the second floor to create a master bedroom will enhance the utilization of the dwelling by its residents. Furthermore, the Board finds that the proposed height of the second floor addition will be 20.6' which is well below the maximum height of 35' allowed in Section 240-70 of the Code of Falmouth.

The Board finds that the plans show that there are three (3) bedrooms existing and will remain a three-bedroom through this special permit approval. However, the Board notes that the subject property is on Town sewer and has the capability to have a four (4) bedrooms.

The Board finds that the applicant is amenable to installing drywells on subject property if found by the project engineer that they will be required to maintain runoff on subject property. The Board further finds that the shed shown on the 'Certified Plot Plan' submitted and noted herein will remain on subject property and shall not be increased in size.

In addition to the above findings, the Board finds that the proposed project as represented herein 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 project as the applicant is removing portions of the existing structure to accommodate additions to the structure where the nonconforming lot coverage by structures will not be increased, there will be no increase to the existing nonconforming setbacks and no new nonconformities are being created through this special permit approval.

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 this special permit approval.

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 subject property is served by Town sewer.

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 did not receive a referral from the Water Department for the proposed changes to subject dwelling.

G. The proposed dwelling additions 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 project 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 Hurrie 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 Raffaele and Jennifer I. DelSesto (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to remove portions of the dwelling, construct additions, including a partial second floor, to the pre-existing nonconforming single-family dwelling on subject property known as 13 Russell Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of the westerly side of the dwelling, removal of a portion of the front covered porch, addition to front and rear façade and construction of a partial second floor, all setbacks, lot coverage, height of proposed second floor addition and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Proposed Addition 13 Russell Road in Falmouth, Massachusetts” as drawn by Cape & Islands Engineering on a plan dated November 14, 2017 – Sheet No. 1 of 1 ‘Certified Plot Plan’ – plan is

stamped and signed by Matthew C. Costa, PLS with a Board date 'received' stamp of December 18, 2017;

- "Existing Conditions at 13 Russell Street Falmouth, MA" drawn by Longfellow Design-Build dated 7/5/2016 and consisting of EX-0 'Existing Basement Floor Plan', EX-1 Existing First Floor Plan', EX-3 'Existing Exterior Elevations' and EX-4 'Existing Exterior Elevations' -- all with a Board date 'received' stamp of December 18, 2017; and
 - "Jen & Ralph DeISeSto 13 Russell Rd. Falmouth" as drawn by Longfellow Design-Build consisting of Drawing A1 'First Floor Plan', Drawing A2 'Second Floor Plan' and Drawing A5 -- all Drawings dated 11/07/2017 and with a Board date 'received' stamp of December 18, 2017.
2. Drywells shall be located on subject property according to the determination of the project engineer as to the need and location of said drywells to maintain runoff 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 three (3) 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: 117-17

Applicant: RAFFAELE DELSESTO and JENNIFER I. DELSESTO of Colchester, CT

Subject Property: 13 Russell Road, Falmouth, Massachusetts
Map 39 Section 16 Parcel 036 Lot 035

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

FEB 22 2018

FALMOUTH TOWN CLERK

ap@410pm

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.