

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 007-18

APPLICANT/OWNER: SHARON B. MILLS of Beaufort, NC

SUBJECT PROPERTY: 69 Montauk Street, Teaticket, Massachusetts
Assessor's Map: Map 39A Section 11 Parcel 000 Lot 109

DEED/CERTIFICATE: Certification #153167 – Plan 4286-A, Lot 109, Plate 9

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 12, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 69 Montauk Street, Teaticket, 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 March 15, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternates Gerald Potamis and Robert Dugan (sitting as voting members) 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 Brian Bourque, 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)

From January 11, 2018 to March 6, 2018 there are emails between ZBA staff and applicant's representative(s) submitted to the file – general questions and responses

Letters/Referrals/E-mails from Town Departments

- 01/16/2018 Referral submitted to the file from the Planning Department staff with no comment
- 01/18/2018 Referral submitted to the file from Water Superintendent that states: *1962 service connection = 56 year old; Location of new water service will need to be submitted to Water Department for approval*
- 01/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 01/23/2018 Referral submitted to the file from Director of Assessing with no comment
- 02/05/2018 Referral submitted to the file from Board of Health Agent 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 Site Plan” prepared for Sharon Mills of 69 Montauk Street, Falmouth, MA as drawn by J.E. Landers-Cauley, PE on a plan dated 12/12/2017 with a final revision date of 3/1/2018 – the plan is stamped, signed and dated by Gary S. Labrie, PLS on 3/6/2018 and has a Board date ‘received’ stamp of March 7, 2018;

“69 Montauk Existing Cottage” – computer generated floor plans of existing dwelling to be razed – with a Board date ‘received’ stamp of January 16, 2018; and

“Mills House 69 Montauk Street, Maravista” as drawn by Chris Warner Architect consisting of: ‘SK-Basement’ dated 2/16/18, ‘SK-1st Floor Plan’ dated 2/16/18, ‘SK-Second Floor Plan’ dated 2/16/18, ‘SK-East Elevation’ dated 2/16/18, ‘SK-West Elevation’ dated 2/16/12018, ‘SK-South Elevation’ dated 2/16/18 and ‘SK-North Elevation’ dated 3/5/2018 – all with a Board date ‘received’ stamp of March 6, 2018.

Hearing:

Brian Bourque reviewed the existing site that consists of 3,200 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District and is within the Search and Rescue Overlay District. The applicant’s family has owned the property since 1961. The existing single-story dwelling with no basement has one (1) bedroom. The structure has a nonconforming setback to the front property line of 16’ and westerly side yard property line of 8.9’. The lot coverage by structures is nonconforming at 26.2%. He explained that the front setback will be improved to 16.4’; the side yard setback will be improved to 9.6’; and the lot coverage will be improved from 26.2% to 24.67%. The house will be reconstructed into a two-story, two-bedroom dwelling with basement and attic space. The lot is serviced by Town sewer. The shed at the southwest corner of the lot will be removed and not replaced. Mr. Bourque explained that the applicant is trying to save a 38” oak at the rear of the dwelling on site.

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

Ms. Mills, applicant, spoke regarding the need for some additional space and how she reviewed a lower peak on the dwelling but thought it looked out of place.

The Board discussed plans with Brian Bourque, specifically the height of the dwelling that is proposed at 33.9' on such a small lot; one member stating: "the structure will tower over all the other structures with a small footprint and very steep roof." Mr. Bourque explained the pitch and possible ways to possibly reduce slightly the height. The Board asked Mr. Bourque to get the height of the dwelling down to a maximum of 31.5'.

Member Van Keuren made a motion to continue the hearing to March 15, 2018 at 6:00PM. Member Hurrie seconded the motion. Motion carried 5 - 0.

Continuation of Hearing on March 15, 2018 – 6:00 PM:

Note: Chairman Foreman is absent. Vice Chairman Terrence Hurrie will be acting Chairman and Alternate Robert Dugan, who was present at previous hearing, will sit.

Brian Bourque reviewed the revised plans submitted showing that the structure will now be at a 31.5' height and the removal of one stair due to change in foundation reduce the lot coverage by structures to 24.58%. There were no changes to the interior plans as submitted previously.

Member Murphy made a motion to close the hearing. Member Potamis 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 69 Montauk Street in Teaticket contains 3,200 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District and the Search and Rescue Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the existing one-story, one-bedroom dwelling with no basement. The existing dwelling structure has a nonconforming setback to the front property line off Montauk Street of 16.0' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth and a nonconforming setback to the westerly side yard property line of 8.9' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures on subject property exceeds the 20% maximum allowed by right under Section 240-69 A. of the Code of Falmouth, as well as the 25% allowed by special permit under Section 240-69 E. of the Code of Falmouth.

The applicant proposes to raze the existing dwelling and reconstruct a two-story, two-bedroom dwelling with a basement and attic. The dwelling was proposed at 33.9' and the applicant reduced it to 31.5' upon Board's request. The proposed dwelling will slightly improve the nonconforming front yard

setback from 16.0' to 16.4' and the westerly side yard property line will be improved from 8.9' to 9.6'. The lot coverage by structures, after revising the height of the dwelling will be reduced from 26.2% to 24.58%. The shed that was in the southwest corner of the subject property will be removed and not replaced.

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 is not substantially more detrimental than what currently exists as it will slightly improve the two nonconforming setbacks and lot coverage on subject property, and not create any new nonconformities. The Board further finds that the proposed two-story, two-bedroom single-family dwelling will greatly improve the property and an enhancement of the dwelling use by its residents.

The Board finds that the proposed single-family dwelling on subject property will have a basement that according to testimony will be unfinished and an attic that will be for storage only. The applicant's representative stated that due to the roof pitch and the height of the area in the attic space, it cannot be used as habitable space and therefore will be storage only. The Board further finds that the plans note that the shed in the southwest corner of the property will be removed and not replaced as there is a basement proposed with an exterior walk-out.

The Board finds that the subject property is serviced by Town sewer that would allow a property in this sewer district to have four (4) bedrooms. However, the proposed is a two-bedroom dwelling and will remain a two-bedroom dwelling through this special permit approval. The Board further finds that the subject property consists of a 3,200 square foot lot that is at the peak of lot coverage by structures herein approved, which may limit the habitable space, including additional bedrooms, to the site. Furthermore, the Board finds that the applicant was amenable to reducing the pitch of the roof and the height of the proposed structure to 31.5' so that the proposed structure will be more in keeping with the neighborhood.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the one-bedroom single-family dwelling on subject property consisting of 3,200 square feet of land 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 reconstructed dwelling as the two nonconforming setbacks will be slightly improved and the lot coverage by structures will be reduced to just below the 25% allowed by special permit in a residential district.

B. The site is suitable for the proposed use as the property is zoned residential and the single-family dwelling will be maintained as a single-family dwelling through this special permit approval.

C. There will be no impact on traffic flow and safety with the addition of one (1) bedroom (making this a two-bedroom dwelling) and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be greatly 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 subject property is serviced by Town sewer and proposed and approved herein as a two-bedroom single-family dwelling.

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 raze and reconstruction of the 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 Murphy 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 Sharon B. Mills (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming one-story, one-bedroom dwelling to a nonconforming two and a half story, two-bedroom single-family dwelling on subject property known as 69 Montauk Street in Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing dwelling, construction of proposed dwelling, all setbacks, lot coverage, height of dwelling and use of basement and attic space within proposed dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Proposed Site Plan” prepared for Sharon Mills of 69 Montauk Street, Falmouth, MA as drawn by J.E. Landers-Cauley, PE on a plan dated 12/12/2017 with a final revision date of 3/1/2018 – the plan is stamped, signed and dated by Gary S. Labrie, PLS on 3/6/2018 and has a Board date ‘received’ stamp of March 7, 2018;
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 - “Mills House 69 Montauk Street, Maravista” as drawn by Chris Warner Architect consisting of: ‘SK-Basement’ dated 2/16/18, ‘SK-1st Floor Plan’ dated 2/16/18, ‘SK-2nd Floor Plan’ dated 2/16/18, ‘SK-East Elevation’ dated 2/16/18, ‘SK-West Elevation’ dated 2/16/12018, ‘SK-South Elevation’ dated 2/16/18 and ‘SK-North Elevation’ dated 3/5/2018 – all with a Board date ‘received’ stamp of March 6, 2018.

2. The existing shed shall be removed and not relocated or replaced on subject property.
3. There shall be no bedrooms or sleeping accommodations created within the basement area of the proposed dwelling.
4. The attic space shall be used for storage only and no habitable space created within said attic.
5. The applicant or his/her designee shall submit to the Board of Appeals an 'as-built' plan post construction – showing all appurtenances to the proposed dwelling – to verify height of the dwelling as built (no more than 31.5' in height), lot coverage by structures (including all decks and steps) and the setbacks. The applicant or his/her designee shall submit the 'as-built' plan prior to the final sign-off by the Building Department or the Zoning Board of Appeals/Zoning Administrator.
6. 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.
7. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. 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: **007-18**

Applicant: **SHARON B. MILLS of Beaufort, NC**

Subject Property: **69 Montauk Street, Teaticket, Massachusetts
Map 39A Section 11 Parcel 000 Lot 109**

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, Acting Chairman, Board of Appeals

RECEIVED

MAR 22 2013

FALMOUTH TOWN CLERK

do @ 12:05 pm

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.