

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 031-18

APPLICANT/OWNER: JANE C. CROWLEY, TRUSTEE and BRIAN L. CROWLEY, TRUSTEE
of the Jane C. Crowley Rev. Trust of Wellesley, MA

SUBJECT PROPERTY: 29 Abbies Lane, North Falmouth, Massachusetts
Assessor's Map: Map 02A Section 10 Parcel 012 Lot 042

DEED/CERTIFICATE: Book 31034 / Page 39

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 17, 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 29 Abbies Lane, North 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 June 7, 2018.
4. The public hearing was closed on June 7, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Gerald Potamis 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

05/30/2018 Letter submitted to the file from William C. Bearce and Megan T. Bearce (both signed) of 26 Otis Street stating they are in favor of the application

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

04/17/2018 Attorney Klauer submitted photos of existing structure with application and fee

Letters/Referrals/E-mails from Town Departments

- 04/19/2018 Referral submitted to the file from Planning Department staff that states: *Subject property is on the List of Significant Buildings and is protected by Demo Delay Bylaw, Chapter 107 of Town Code. The Historical Commission will perform an advisory review to potentially wave the 6 month delay at their June 5, 2018 meeting.*
- 04/19/2018 Referral submitted to the file from the Board of Health Agent McGann that states: • *I performed the soil evaluation prior to becoming the Health Agent. I cannot comment on this project.* • *Title 5 design is going in front of the Board of Health on 4-23-18.*
- 04/20/2018 Referral submitted to the file from Director of Assessing with no comment
- 04/25/2018 Referral submitted to the file from Town Water Department states: *The water service must be upgraded and application for new service at same time as building permit with Plan showing septic and other utilities.*
- 04/25/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/07/2018 Referral submitted to the file from Town Engineering Department with standard comment and the recommendation that applicant install drywells, rain garden or other stormwater measure.

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 in Falmouth, Massachusetts” prepared for Jane C. Crowley Revocable Trust #29 Abbies Lane drawn by Bracken Engineering, Inc., Sheet 1 of 1 dated April 9, 2018 – plan shows ‘Existing Conditions Plan Scale’ on top of page – stamped and signed by Alan M. Grady, PLS and bottom of page shows ‘Proposed Conditions Plan Scale’ that is stamped and signed by Zachary L. Basinski, P.E. – plan has a Board date ‘received’ stamp of April 17, 2018;

“Renovation for Brian Crowley 29 Abbies Lane Falmouth, MA” – Existing Floor Plans drawn by William F. Lee, II, AIA Architects and Associates, dated 2/22/18 with a Board date ‘received’ stamp of April 17, 2018; and

“Renovation for Brian Crowley 29 Abbies Lane Falmouth, MA” as drawn by William F. Lee, II, AIA Architect and Associates – Sheet 1, dated 4/4/18 shows proposed floor plans and Sheet 2, dated 4/4/18 shows elevations – both Sheet have a Board date ‘received’ stamp of April 17, 2018.

Hearing:

Attorney Klauer reviewed the existing two-story dwelling that is circa 1900 that has four bedrooms, 1 ½ bathrooms and has a height of 33’. The setback to the front property line is nonconforming at 16.9’ and both side yard setbacks are nonconforming being less than 10’. He explained that the lot coverage by structures, existing now as 31.1%, was made nonconforming due to a change in zoning in 2002 that reduced lot coverage by structures from 35% allowed by right to 20% allowed by right in a residential zone. He then reviewed the proposed reconstructed dwelling that will be two stories, have three (3) bedrooms on second floor and a bonus room in the basement that may be considered a bedroom; the office space on first floor proposed has a cased

opening so as not to be counted as a bedroom. He reviewed the proposed setbacks noting that the existing nonconforming setback to the front property line of 16.9' will be improved to 23.8' and that both nonconforming side yard setbacks existing will become compliant. He stated the nonconforming lot coverage by structures will be slightly reduced from 31.1% to 31.0%; and the height of the proposed dwelling will be reduced from existing height of 33' to 27.7'.

Attorney Klauer informed the Board that the Planning Board referral, dated 4/19/2018, noted that the dwelling was on the Inventory of Significant Buildings. However, on June 6, 2018 the Historical Commission wrote a letter to the Building Commissioner noting that the Commission voted to issue a waiver of the six (6) month delay to allow for the issuance of a demolition permit for subject structure.

The Board discussed plans with Attorney Klauer. All concerns and questions were addressed.

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

Joseph Sergi of 11 Marion Road stated concern with his view as he is the lot behind the subject lot and he feels there is an impact to his view through the reconstruction. He asked the Board to stop the project.

Chairman Foreman asked Mr. Sergi if he had a view easement. Mr. Sergi stated no but that he felt views are protected in the zoning bylaws and the proposed is in violation. Mr. Foreman explained that the zoning bylaws stated no impact on a view or vista from a public roadway only. (Note: There is a 6' fence along the rear property line that separates Mr. Sergi's property from subject property.)

Member Potamis made a motion to close the hearing. Member Van Keuren 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 29 Abbies Lane in North Falmouth contains 4,494 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has a nonconforming setback to the front property line off Abbies Lane of 16.9' which requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth, both side yard setbacks are less than the 10' setback required under Section 240-68 B. of the Code of Falmouth and the lot coverage by structures exceeds the 20% maximum by right allowed in a residential district pursuant to Section 240-69 A. The existing dwelling is circa 1900, has two-stories and four (4) bedrooms. The proposed dwelling is a two-story three-bedroom structure with a bonus room in the basement; the front yard setback will be improved, the two (2) nonconforming side yard setbacks will become conforming and the lot coverage by structures will be slightly reduced.

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 a pre-existing nonconforming single-family dwelling will not be substantially more detrimental than what is existing as the proposed plan reviewed and discussed

herein eliminates two (2) nonconforming side yard setbacks, improves the front yard setback, there is a slight decrease in the nonconforming lot coverage by structures from 31.1% to 31.0%, and the ridge height will be reduced from 33' to 27.7' (which is well below the 35' height allowed under Section 240-70 of the Code of Falmouth). The Board further finds that the proposed reconstructed dwelling will enhance the utilization of the dwelling and property for the occupants.

The Board finds that the lot coverage by structures on subject property was conforming at 31.1% until the 2002 Annual Town Meeting voted to reduce the then existing 35% lot coverage by structures maximum allowed in a residential zone to 20%, with a caveat that a special permit would be required to increase the lot coverage by structures up to no more than 25%.

In addition to the above findings, the Board finds that the proposed 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 existing single-family dwelling as it improves the front yard setback, eliminates two (2) nonconforming side yard setbacks, very slightly decreases lot coverage by structures and maintains the capability of four (4) bedrooms.
- B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used 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 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 a public roadway.
- E. The sewage disposal system is in place and signed off as a four bedroom system by the Board of Health according to testimony by the applicant and as shown on the "Proposed Site Plan" submitted and noted herein.
- 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 reconstruction of a pre-existing nonconforming 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 Jane C. Crowley and Brian L. Crowley, Trustees (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property

located at 29 Abbies Lane, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the existing nonconforming dwelling, construction of the proposed two-story, four-bedroom dwelling, all setbacks, lot coverage, height of proposed dwelling 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:

“Proposed Site Plan in Falmouth, Massachusetts” prepared for Jane C. Crowley Revocable Trust #29 Abbies Lane drawn by Bracken Engineering, Inc., Sheet 1 of 1 dated April 9, 2018 – plan shows ‘Existing Conditions Plan Scale’ on top of page – stamped and signed by Alan M. Grady, PLS and bottom of page shows ‘Proposed Conditions Plan Scale’ that is stamped and signed by Zachary L. Basinski, P.E. – plans has a Board date ‘received’ stamp of April 17, 2018;

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2. There shall be no more than four (4) bedrooms on subject property.
3. There shall be no bedroom created within the basement area without a building permit being issued to ensure proper egress.
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 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: **031-18**

Applicant: **JANE C. CROWLEY and BRIAN L. CROWLEY, TRUSTEES
Of the Jane C. Crowley Revocable Trust of Wellesley, MA**

Subject Property: **29 Abbies Lane, North Falmouth, MA
Map 02A Section 10 Parcel 012 Lot 042**

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.

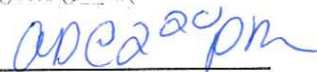


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

JUN 15 2018

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.