

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 056-18

APPLICANT/OWNER: JOSEPH P. RATHGEB and ELAINE J. RATHGEB of Foxboro, MA

SUBJECT PROPERTY: 117 Westwood Road, North Falmouth, Massachusetts
Assessor's Map: Map 04 Section 00A Parcel 000 Lot 095

DEED/CERTIFICATE: Certificate 202934 – Lot 95 (sec A), Plan 11518-T (Sheet 1)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 3, 2018, 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 raze existing dwelling and detached garage and construct a dwelling with attached garage on subject property known as 117 Westwood Road, 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 August 16, 2018.
4. The public hearing was closed on August 16, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, 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 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)

07/05/2018 Attorney Klauer submitted 'Lot Size Comparison' of area lots in proximity to subject property and photos of existing dwelling

Letters/Referrals/E-mails from Town Departments

- 07/05/2018 Referral submitted to the file from Planning Department staff with no comment
- 07/05/2018 Referral submitted to the file from Conservation Commission with no comment
- 07/06/2018 Referral submitted to the file from Town Water Department that states: *Applicant will need to identify to Water Department if existing service remains or is relocated. House has a meter pit now. Meter will need to relocate into new dwelling.*
- 07/10/2018 Referral submitted to the file from Director of Assessing with no comment
- 07/17/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/30/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measures. Attached to referral is information regarding the property and its proximity to Buzzards Bay and issues with stormwater runoff within the surrounding area. The Department recommends pervious driveway (new driveway proposed) in addition to roof drywells.
- 08/03/2018 Referral submitted to the file from the Board of Health Agent that states: *Existing septic system is now being shown under proposed driveway. Components of the system would have to be H-20 load rated. BOH records indicate the soil absorption system is constructed of high capacity infiltrators without indicating H-20 loading. Soil absorption system may need to be replaced if H-10 rated and a driveway is installed on top.*

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 Redevelopment Plan” prepared for Joseph P & Elaine J. Rathgeb for 117 Westwood Road in Falmouth, Massachusetts as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated April 27, 2018 with a final revision date of 7/30/2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of August 14, 2018; and

“Rathgeb – 117 Westwood Rd. N. Falmouth, MA” architectural plans as drawn by Longfellow Design-Build consisting of:

- ‘Demo Plans’ Drawing A0.1 dated 5/9/18 – Board ‘received’ date of July 3, 2018
- ‘Foundation Plan’ Drawing A1.0 dated 5/9/18 – Board ‘received’ date of July 3, 2018
- ‘First Floor Plan’ Drawing A1.1 dated 5/9/18 – Board ‘received’ date of July 3, 2018
- ‘Second Floor Plan’ Drawing A1.2 dated 5/9/18 – Board ‘received’ date of July 3, 2018

- 'Exterior Elevations' Drawing A2.1 dated 5/9/18 – Board 'received' date of July 3, 2018
- 'Exterior Elevations' Drawing A2.2 dated 5/9/18 – Board 'received' date of July 3, 2018
- 'Sections' Drawing A3.1 dated 5/9/18 – Board 'received' date of July 3, 2018
- 'Sections Continued' Drawing A3.2 dated 5/9/18 – Board 'received' date of July 3, 2018
- 'Garage Plan' Drawing A3.3 dated 5/9/18 – Board 'received' date of July 3, 2018

Hearing:

Attorney Kevin Klauer reviewed existing site conditions and proposed razing of existing detached garage and dwelling and constructing new dwelling with attached garage. He explained that there are currently three (3) bedrooms in the dwelling and one (1) bedroom in the second level of the detached garage. The dwelling is a one-story dwelling with an approximate height of 20'; the detached garage has a height of 27' (nonconforming). The existing dwelling structure has a nonconforming setback from the southwest corner of the dwelling to the side yard setback of 9.5' that requires a 10' setback, the existing deck encroaches onto abutting property to the west and the lot coverage by structures is 26.0%, where 20% is allowed by right. The applicant is proposing to raze both dwelling and detached garage and build a new dwelling with attached garage. The new structure will be four (4) bedrooms (no increase), all setbacks will be conforming (front, side and rear), the height will be increased to 31.1' - which is below the 35' maximum height allowed, and the lot coverage by structures will be decreased from 26% to 22.1%. Attorney Klauer stated that the basement proposed will be finished storage area.

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

Chairman Hurrie asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Bielan made a motion to close the hearing. Member Van Keuren 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 117 Westwood Road in North Falmouth contains 12,016 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze the pre-existing nonconforming dwelling and detached garage structure and construct new dwelling with attached garage. The existing dwelling had a nonconforming setback of 9.5' to the westerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; the deck attached to the existing dwelling encroaches onto the abutters property and it also should have been 10' from the side yard property line; and the lot coverage by structures is nonconforming at 26% as it exceeds the 20% by right

maximum according to Section 240-69 A. of the Code of Falmouth and it also exceeds the 25% maximum lot coverage by structures allowed through a special permit approval under Section 240-69 E. of the Code of Falmouth. There are four (4) bedrooms existing on subject property with three (3) in the dwelling and one (1) above the garage space. The proposed dwelling will have four (4) bedrooms. The height of the existing structure is approximately 20' and the proposed dwelling will be 31.1' which is below the 35' maximum allowed pursuant to Section 240-70 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 razing of the detached garage and existing dwelling and construction of a new dwelling with attached garage will not be substantially more detrimental than what currently exists as the proposed dwelling with attached garage will be in compliance with all setbacks under Sections 240-68 A. and B. of the Town Code; and the proposed will decrease the nonconforming lot coverage by structures from 26% to 22.1% (below the 25% allowed by special permit under Section 240-69 E. of the Code of Falmouth). The Board further finds that the proposed will be an enhancement to the subject property and will improve utilization of the dwelling for its occupants.

In response to the referral from the Board of Health Agent, the Board finds through testimony by the applicant's representative that the septic system components that are within driveway and parking area will have an H-20 cover as required.

The Board finds through testimony by the applicant's representative that a portion of the driveway may be paved and that the total lot coverage (structures, parking and paving) proposed as 38.3% includes the calculation of impervious material on the driveway. The Board further finds through testimony by the applicant's representative, the applicant will work with the Engineering Department in the grading of the front portion of the lot (driveway) in order to maintain stormwater on subject property. Furthermore, the Board further finds in response to the Engineering Department's referral, that the proposed plan noted herein shows five (5) drywells proposed around the new dwelling structure to maintain stormwater runoff onto site.

The Board finds that there are no sheds proposed on subject property and according to the applicant's representative, there is no intent by the applicant to place a shed or other accessory structure on subject property.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the pre-existing nonconforming dwelling and detached garage structure and construction of a new dwelling 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 the new dwelling with attached garage structure will eliminate both of the nonconforming setbacks and will be totally in compliance with Section 240-68 A. and B. of the Code of Falmouth; and the nonconforming lot coverage by structures will be reduced from 26% to 22.1% which is below the 25% allowed through a special permit pursuant to Section 240-69 E. 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 used as a single-family dwelling through the 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 the abandonment of existing driveway and proposed new driveway on the other side of the property will not impact traffic flow or public safety.

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 in place and noted by the Board of Health in a referral submitted to the file.

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 existing dwelling and garage on subject property 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 Foreman 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 Joseph P. and Elaine J. Rathgeb (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze the pre-existing nonconforming single-family dwelling and detached garage and construct a new dwelling with attached garage on subject property known as 117 Westwood Road, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the existing dwelling and detached garage, construction of new four-bedroom dwelling with attached garage, all setbacks (conforming), 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 Redevelopment Plan" prepared for Joseph P. & Elaine J. Rathgeb for 117 Westwood Road in Falmouth, Massachusetts as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated April 27, 2018 with a final revision date of 7/30/2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date 'received' stamp of August 14, 2018; and

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 - e) 'Exterior Elevations' Drawing A2.1 dated 5/9/18 – Board 'received' date of July 3, 2018
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 - g) 'Sections' Drawing A3.1 dated 5/9/18 – Board 'received' date of July 3, 2018
 - h) 'Sections Continued' Drawing A3.2 dated 5/9/18 – Board 'received' date of July 3, 2018
 - i) 'Garage Plan' Drawing A3.3 dated 5/9/18 – Board 'received' date of July 3, 2018
2. There shall be no more than four (4) bedrooms allowed on subject property.
 3. There shall be no shed or any other accessory structure allowed on subject property without prior approval from the Board of Appeals. Approval may be through a modification of this special permit or Board administrative approval.
 4. The applicant shall work with the Town Engineering Department to create adequate grade on proposed driveway location for stormwater runoff.
 5. All stormwater runoff shall be maintained on subject property.
 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: **056-18**

Applicant/Owner: **JOSEPH P. RATHGEB and ELAINE J. RATHGEB of Foxboro, MA**

Subject Property: **117 Westwood Road, North Falmouth, Massachusetts
Map 04 Section 00A Parcel 000 Lot 095**

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 Hurrie, Chairman, Board of Appeals

RECEIVED

AUG 23 2018

FALMOUTH TOWN CLERK

008:05am

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.