

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 055-18

APPLICANT/OWNER: WILLIAM P. McDERMOTT & MAUREEN C. McDERMOTT
of Mansfield, MA

SUBJECT PROPERTY: 42 Tower House Road, Falmouth, Massachusetts
Assessor's Map: Map 46B Section 07 Parcel 007 Lot 004

DEED/CERTIFICATE: Book 30429 / Page 272

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 29, 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 42 Tower House 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 August 16, 2018.
4. The public hearing was closed on October 11, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Member Paul Murphy and Associates 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 present at the hearing as well as his project engineer Michael Borselli, PE with Falmouth Engineering, Inc. Both applicant and Mr. Borselli 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)

- 08/08/2018 Michael J. Borselli, PE submitted a letter dated 8/8/18 five (5) copies of plans for proposed raze and reconstruct and stated the existing basement is unfinished/storage and bulk calculations of neighborhood and subject property
- 08/31/2018 Falmouth Engineering, Inc. submitted revised house plans
- 09/18/2018 Applicant submitted revised plans showing proposed dwelling at less height and architectural and roof line changes
- 10/11/2018 Applicant submitted 'Neighborhood Bulk Calculations' and photos of homes within the general area of subject property

Letters/Referrals/E-mails from Town Departments

- 07/02/2018 Referral submitted to the file from Planning Department staff that states: *This property is on the list of Significant Buildings and is on the July 10th Historical Commission Agenda for a Request for a Review of Demolition*
- 07/03/2018 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 07/03/2018 Referral submitted to the file from Director of Assessing with no comment
- 07/06/2018 Referral submitted to the file from Water Superintendent that states: *This is currently a ¾" service. Applicant will need to upgrade to a 1" PE line. Plan of build and water location needed at DPW-Water.*
- 07/30/2018 Referral submitted to the file from Town Engineering that has standard comments with the recommendation to add drywells, rain garden, or other stormwater measure for the roof.
- 08/16/2018 Letter submitted to the file from the Historical Commission dated July 11, 2018 giving approval for the subject dwelling to be demolished

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

"Existing Conditions Plan for #42 Tower House Road" prepared for William McDermott in Falmouth, Ma as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated June 4, 2018 – plan is stamped, signed and dated by Gary S. Labrie on 6/29/2018 and has a Board date 'received' stamp of June 29, 2018;

“Plot Plan for #42 Tower House Road” prepared for William McDermott in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated June 4, 2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 6/29/2018 and stamped and signed by Michael J. Borselli, PE and has a Board date ‘received’ stamp of June 29, 2018;

“Septic System Details for #42 Tower House Road” prepared for William McDermott in Falmouth, MA dated June 4, 2018 – Sheet 3 of 3 – plan is stamped and signed by Michael J. Borselli, PE and has a Board date ‘received’ stamp of June 29, 2018; and

“McDermott Builders 42 Tower Road Falmouth Massachusetts” architectural plans drawn by P.L.A.N.S. Company consisting of the following final revised plans:

- Page 1 ‘Front Elevation’ dated 9/17/2018 with a Board date ‘received’ stamp of Oct. 1, 2018
- Page 2 ‘Left Elevation’ dated 9/17/2018 with a Board date ‘received’ stamp of Oct. 1, 2018
- Page 3 ‘Rear Elevation’ dated 9/17/2018 with a Board date ‘received’ stamp of Oct. 1, 2018
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Hearing was opened on August 16, 2018 wherein Mr. Borselli of Falmouth Engineering, Inc. and the applicant discussed the existing dwelling and raze and reconstruction of said dwelling. The Board discussed plans with the applicant including their concerns with the proposed height of the dwelling (34.6’), the bulk it is creating on a small lot and the architectural integrity vs the neighborhood.

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

Mike Walsh of 15 Circular Avenue stated support of the project noting that the existing is decrepit and decaying; and stated concern of only one parking spot.

Based on the discussion with the Board Mr. Borselli asked for a continuation.

A motion was made by Member Foreman to continue the hearing to September 6, 2018 at 6:30 PM Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing continued to September 6, 2018 wherein Mr. Borselli reviewed the Board's comments from previous hearing and revisions made to the dwelling plans. Mr. McDermott [applicant] explained condition of existing dwelling and the proposed architectural changes.

Board discussed and felt revisions were good, they still had a concern with height of dwelling and bulkiness. The Board's consensus was not in favor of the proposed dwelling. Mr. Borselli stated that there are no guidelines for architectural integrity. In lieu of a denial he asked for a second continuation to work on the height and architectural features.

Member Bielan made a motion to continue the hearing to October 4, 2018 at 6:30 PM. Member Dugan seconded the motion. Motion carried 5 – 0.

October 4, 2018 hearing was rescheduled to October 11, 2018 at 6:15 PM due to lack of quorum for this application.

Hearing on October 11, 2018 wherein Mr. McDermott submitted revised architectural plans that showed the height of the dwelling be decreased to 31.8', the change in roof lines and architectural features on the side and rear to break up appearance of bulk. Mr. McDermott also showed the Board photos of some existing dwellings in the general neighborhood noting height and architectural features.

There was no further public comments.

Member Potamis made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 – 0.

Chairman Hurrie closed the hearing. The Board discussed findings

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 42 Tower House Road in Falmouth contains 3,925 square feet of Residential C 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 of 4.7' to the front property line off Tower House Road that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth (Frontage off Crown Avenue is in compliance), a nonconforming setback of 7.4' to the westerly side yard property line that requires a 10' setback and a 5.1' setback to the northerly side yard property line that is also required to have a 10' setback – both pursuant to Section 240-68 B. of the Code of Falmouth and the lot coverage by structures is nonconforming at 28.9% where a 20% maximum is allowed by right pursuant to Section 240-69 A. The lot coverage by structures was made nonconforming due to a change in the bylaw where previously a residential lot was allowed 35% lot coverage by structures by right until 2002 when Town Meeting voted to change the bylaw decreasing the lot coverage by structures in a residential zoned district to 20% maximum by right and allowing coverage by structures up to, but not to exceed, 25% through a special permit. The proposed raze and reconstruct will be substantially within the same footprint as existing and shall slightly improve the

nonconforming setbacks and decrease the lot coverage as well by .1%. The existing dwelling is a five-bedroom one and one-half story structure and the proposed will be a two-story, four-bedroom dwelling.

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 the proposed will very slightly reduce the nonconforming setbacks and lot coverage; will decrease bedroom count from five (5) existing to four (4) and will have a new septic system installed. The Board further finds that the applicant worked with the Board to lessen the height of the proposed dwelling from just below 35' to 31.6' and redesigned the roof lines so as to have the appearance of less bulk and more in keeping with the neighborhood. Furthermore, the Board finds that the existing dwelling was in bad repair and the proposed reconstruction of said dwelling will enhance the utilization of the dwelling for its residents.

The Board finds that the subject property consisting of 3,925 square feet is unique in size and shape but consistent with the general area of subject property and that the applicant worked within the existing footprint so as not to become any more nonconforming than existing. The Board further finds based on testimony by the applicant's representative that the applicant is aware of the narrow roadway where there should be no off-street parking and has made parking on site available for two (2) vehicles.

The Board finds that the proposed raze and reconstruction of the dwelling did go before the Historic Commission as the dwelling was listed on the Demolition Delay list and was approved for demolition on July 10, 2018 by said Historic Commission (see letter submitted to the file from Historical Commission dated July 11, 2018).

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the pre-existing nonconforming single-family 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 property and the proposed raze and reconstruction as the existing dwelling, circa 1900, has existed in harmony within the neighborhood and the proposed dwelling will not be any more nonconforming in setbacks and lot coverage and the proposed is an improvement to the property and neighborhood.

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 dwelling through this special permit approval.

C. There will be no impact on traffic flow and safety as there will be a decrease in the number of bedrooms (5 to 4) 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 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 proposed septic system will require a variance from the Board of Health prior to the issuance of a building permit (see referral from Board of Health 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 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 Dugan 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 William P. and Maureen C. McDermott (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 known as 42 Tower House Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing dwelling, construction of proposed two-story, four-bedroom dwelling, all setbacks, lot coverage, height of building, septic system, parking and use of the dwelling shall be as represented to the Board and as shown on revised plans submitted and reviewed by the Board entitled and dated as follows:

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2. There shall be no more than four (4) bedrooms allowed on subject property.
 3. The applicant shall be required to submit an as-built plan post construction so as to include all appurtenances to verify all setbacks and height of the constructed dwelling as approved herein. The as-built shall be submitted to the Board of Appeals for review prior to the issuance of a final inspection by the Building Department. There shall not be a Certificate of Occupancy for the dwelling issued without the as-built as required herein submitted for review by the Board of Appeals
 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: **055-18**

Applicant/Owner: **WILLIAM P. McDERMOTT & MAUREEN C. McDERMOTT
of Mansfield, MA**

Subject Property: **42 Tower House Road, Falmouth, Massachusetts
Map 46B Section 07 Parcel 007 Lot 004**

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
OCT 16 2018

FALMOUTH TOWN CLERK

AD @ 4:10 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.