

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

**SPECIAL PERMIT NO:** 089-18

**APPLICANT/OWNER:** JEFFREY J. BATTA, TRUSTEE OF JEFFREY J. BATTA 2013 TRUST of Mansfield, Massachusetts

**SUBJECT PROPERTY:** 360 Shorewood Drive, East Falmouth, Massachusetts  
**Assessor's Map:** Map 39 Section 02D Parcel 000 Lot 262B

**DEED/CERTIFICATE:** Book 31195 / Page 52

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of September 25, 2018 the applicant filed with the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling, exceeding 20% lot coverage by structures, on subject property known as 360 Shorewood Drive, East Falmouth, Massachusetts.
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 November 29, 2018.
4. The public hearing was closed on November 29, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Paul Murphy and Associates Gerald Potamis and Robert Dugan (appointed 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 Attorney Laura M. Moynihan and Russ Crocker with Giampietro Architects. Both representatives reviewed and discussed the request for special permit 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)**

- 09/26/2018 Email between staff and Attorney Moynihan regarding use of existing foundation for reconstruction of dwelling
- 09/27/2018 Email from project architects noting existing dwelling ridge height of 15'9"
- 09/28/2018 Email from Board of Health Agent McGann confirming there is an adequate proposed four-bedroom septic design on plan and noting that the office could be considered a 5<sup>th</sup> bedroom based on its privacy (door).
- 11/25/2018 Attorney Moynihan submitted to the file a 'Lot Coverage Analysis for 360 Shorewood Drive' with Assessors' information on each lot noted in Analysis
- 11/29/2018 Letter from Giampietro Architects dated November 28, 2018 to Board of Appeals as opinion of the integrity of the existing foundation to support proposed second floor – letter is stamped by Louis F. Giampietro, RA

**Letters/Referrals/E-mails from Town Departments**

- 09/28/2018 Referral submitted to the file from Director of Assessing with no comment
- 09/28/2018 Referral submitted to the file from Planning Department staff with no comment
- 10/01/2018 Referral submitted to the file from Water Department that states: *Applicant/owner has to upgrade ¾" water service to 1" polyethylene pipe or better*
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/22/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof

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 (Wastewater when property is on sewer)

**Plans submitted by Applicant/Applicant's Representative**

"Proposed Site Plan" prepared for Jeffrey J. Batta, Trustee as drawn by JC Engineering, Inc. – plan dated July 11, 2018 – plan stamped and signed by John L. Churchill, Jr., PLS and John L. Churchill, Jr., PE – plan has a Board date 'received' stamp of September 25, 2018; and

"Renovation to: The Batta Residence 360 Shorewood Drive East Falmouth, MA 02536" as drawn by Giampietro Architects consisting of:

- Drawing AB1 'Existing Conditions' (elevations) dated 4/4/18 with a Board date 'received' stamp of September 25, 2018
- Drawing AB2 'Existing Conditions' (floor plans) dated 4/4/18 with a Board date 'received' stamp of September 25, 2018
- Drawing A1 'Elevations' dated 7/10/18 with a Board date 'received' stamp of September 25, 2018
- Drawing A2 'Elevations' dated 7/10/18 with a final revision date of 11/28/2018 with a Board date 'received' stamp of November 29, 2018
- Drawing A3 'Floor Plans' dated 7/10/18 with a final revision date of 11/28/2018 with a Board date 'received' stamp of November 29, 2018

Hearing:

Attorney Moynihan reviewed the 16,250 square foot subject property that has a pre-existing nonconforming four-bedroom one-story dwelling, circa 1966, with a nonconforming setback of 5.1' to the northerly side yard property line. She explained the applicant is proposing to raze the existing structure and utilize the existing concrete foundation and reconstruct a two-story, four-bedroom dwelling with attached garage. The existing lot coverage by structures of 13.2% will be increased to 24.8% - exceeding the 20% maximum allowed by right and requiring relief under Section 240-69 E. of the Code of Falmouth. The existing nonconforming setback of 5.1' at the bulkhead on the northerly side property line will remain as is; the basement will be filled in according to flood zone requirements and the existing shed at the northerly side of property will be removed and not replaced or relocated. The height of the proposed dwelling will be 25.7'. A new four-bedroom Title 5 Septic System is proposed and the old system shall be abandoned (see note on "Proposed Site Plan"). Attorney Moynihan noted an error on the plan regarding designation of 'north' on side elevations. She reviewed the lot coverage calculations in the general neighborhood area, showing photos of existing homes that are similar in height and size as the proposed dwelling on site.

The Board discussed plans with Attorney Moynihan and Mr. Crocker. Mr. Batta, applicant, was present and explained that the paved driveway will be replaced with a pervious driveway – same location (changing the total lot coverage percentage). All other 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 Foreman 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 360 Shorewood Drive in East Falmouth contains 16,250 square feet of Residential B zoned land that is located within the Great Pond Coastal Pond Overlay District and the

Accident Prevention Zone. The applicant applied under Section(s) 240-3 C. (pre-existing nonconforming dwelling) and 240-69 E. (lot coverage by structures) of the Code of Falmouth to raze to the foundation, the existing four-bedroom, one-story single-family dwelling and reconstruct a two-story, four-bedroom single-family dwelling using existing foundation on subject property. The existing shed will be removed as shown on the plan. The existing dwelling has a nonconforming 5.1' setback to the northerly side property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage on subject property as existing is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed plans show that, although the basement is to be filled in as according to flood plain regulations, the bulk head will remain maintaining the nonconforming 5.1' setback. Lot coverage by structures for the proposed dwelling will exceed the 20% maximum allowed in a residential district and will be considered herein under the criteria of Section 240-69 E. of the Code of Falmouth. The dwelling as proposed will be maintained as a four-bedroom dwelling and the applicant has proposed an upgrade to the septic system that will be approved by the Board of Health.

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 existing dwelling to the foundation and construction of new dwelling as described herein will not be substantially more detrimental than what currently exists as there will be no new nonconforming setbacks, the existing nonconforming setback will remain with no increase and the existing shed shall be removed and not replaced or relocated. The Board further finds that the proposed dwelling will have the same amount of four (4) bedrooms as existing dwelling did and an upgraded four-bedroom Title 5 system is being installed. Furthermore, the Board finds that the proposed dwelling with an attached garage will enhance the utilization of the dwelling by its occupants and allow for storage area as the existing basement will be required to be filled in per flood plan regulations.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to approve an increase of lot coverage by structures from the 20% maximum allowed by right, up to, but not to exceed, 25% after consideration of the proposed structure's height and size compared to those in the neighborhood, if there is any effect of shadowing from the proposed onto adjacent properties, if there is any impact to a view or vista from the public way and if there is any effect of nitrogen on a coastal embayment by the proposed.

The Board finds after consideration of criteria set forth in Section 240-69 E. of the Code of Falmouth that the proposed two-story, four-bedroom dwelling, according to photos submitted with Analysis (submitted to file by applicant's representative) is of average height and size of other dwellings within the general neighborhood, that there does not appear to be any shadow effect on adjacent properties (see locus map in file), that there is no impact on any view or vista from the public way (Shorewood Drive and Sandollar Circle) and that there is no effect of nitrogen on a coastal embayment. The Board further finds that the subject property is within the AE12 Flood Zone and is therefore required to fill in the existing basement thus eliminating storage area and therefore a portion of the increased lot coverage by structures is from a proposed attached garage to allow for storage of vehicles and personal items. It is further noted that the existing shed will be removed and not relocated in order to keep lot coverage by structures below the 25% maximum allowed through special permit approval.

The Board finds that through testimony by the applicant that the driveway shown as 'bituminous drive' on plan will be changed to a pervious material to reduce the increase in total lot coverage. The Board further finds that the applicant will submit a revised plan noting said change prior to issuance of a building permit (see conditions below). The Board further finds that a letter submitted to the file from Louis F. Giampietro, RA states that the integrity of the existing foundation will withstand construction of a second story.

In addition to the above findings, the Board finds that the proposed reconstruction of the pre-existing dwelling on existing foundation with attached garage 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 new dwelling as the existing nonconforming side yard setback of 5.1' will not be increased, there will be no new nonconforming setbacks, the height of the dwelling is in compliance with Section 240-70 of the Code of Falmouth and the increase to lot coverage by structures to 24.8% is approvable pursuant to the criteria set forth in 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 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 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 sewage disposal system proposed will be approved by the Board of Health prior to the issuance of a building permit.

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 stated in the referral submitted to the file from the Water Department.

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 the pre-existing nonconforming single-family dwelling 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 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 Jeffrey J. Batta, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze to the foundation and reconstruct the pre-existing nonconforming four-bedroom single-family dwelling with attached garage on subject property known as 360 Shorewood Drive, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the dwelling to existing foundation, construction of new two-story, four-bedroom dwelling, all setbacks, height of dwelling, proposed septic system, lot coverage and use of single-family 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 Jeffrey J. Batta, Trustee as drawn by JC Engineering, Inc. – plan dated July 11, 2018 – plan stamped and signed by John L. Churchill, Jr., PLS and John L. Churchill, Jr., PE – plan has a Board date ‘received’ stamp of September 25, 2018; and

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  - Drawing A3 ‘Floor Plans’ dated 7/10/18 with a final revision date of 11/28/2018 with a Board date ‘received’ stamp of November 29, 2018
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. The applicant shall submit to the Board of Appeals prior to issuance of a building permit, a revised “Site Plan” showing a pervious driveway and updated lot coverage calculations.
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:       **089-18**

Applicant/Owner:       **Jeffrey J. Batta, Trustee of Jeffrey J. Batta 2013 Trust of Mansfield, MA**

Subject Property:               **360 Shorewood Drive, East Falmouth, Massachusetts  
Map 39 Section 02D Parcel 000 Lot 262B**

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**

**DEC - 4 2018**

**FALMOUTH TOWN CLERK**

*AD@855am*

**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.