

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

SPECIAL PERMIT NO: 087-18

APPLICANT/OWNER: PAUL R. DUPEE JR., TRUSTEE ATAMANNSIT 1997
NOMINEE TRUST of Falmouth, Massachusetts

SUBJECT PROPERTY: 123 Atamansit Road, Hatchville, Massachusetts
Assessor's Map: Map 17 Section 01 Parcel 016 Lot 015

DEED/CERTIFICATE: Certificate 146863 – Lot 15, Plan 23937-D (Sheet 4)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of September 19, 2018 the applicant filed with 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 a pre-existing nonconforming single-family dwelling on subject property known as 123 Atamansit Road, Hatchville, 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 Robert H. Ament of Ament Klauer LLP who 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

11/29/2018 Email letter from Rick A. Olivier of 137 Atamansit Road dated November 28, 2018 submitted to the file – letter states support of proposed project

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

09/24/2018 Attorney Robert H. Ament submitted to the file a letter to Zoning Board of Appeals dated September 24, 2018 with attached copies of floor plan, photos of existing dwelling and a note that existing dwelling is 12' or 13' in height and the proposed is 28'3".

- 11/29/2018 Attorney Robert H. Ament submitted to the file (at the hearing) a copy of the Order of Conditions by the Conservation Commission dated 8/27/2018 for proposed project
- 11/29/2018 Attorney Robert H. Ament submitted to the file (at the hearing) a copy of a Board of Health Certificate of Title for septic system dated September 25, 2018 proposed for subject property

Letters/Referrals/E-mails from Town Departments

- 09/24/2018 Referral submitted to the file from Director of Assessing with no comment
- 09/25/2018 Referral submitted to the file from Water Department noting that there are 2 existing acceptable services on subject property
- 09/28/2018 Referral submitted to the file from Planning Department staff with no comment
- 10/16/2018 Referral submitted to the file from Conservation Commission with no comment
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/24/2018 Referral submitted to the file from Town Engineering Department with standard comments with a note that although the plan shows drywells for the roof and driveway, the Town does not recommend trench drains due to tendency to clog – they suggest a catch basin or yard drain.

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

“Plot Plan – Rebuild House” prepared for Paul R. Dupee, Jr. 123 Atamansit Road Hatchville, East Falmouth, Massachusetts as drawn by BSS Design Inc. consisting of:

- Sheet 1 of 3 ‘Existing Conditions and Removals’ dated June 25, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS - with a Board date ‘received’ stamp of September 19, 2018
- Sheet 2 of 3 ‘Site Plan and SSDS Details’ dated June 25, 2018 with a final revision date of July 30, 2018 – plan stamped and signed by Thomas Jackson Bunker, PLS and Jeffrey Edwin Ryther, PE - and with a Board date ‘received’ stamp of September 19, 2018
- Sheet 3 of 3 ‘Planting Plan and Notes’ dated June 25, 2018 with a final revision date of July 30, 2018 – plan not stamped - and with a Board date ‘received’ stamp of September 19, 2018

Plans of existing dwelling – two (2) photos and a floor plan with a Board date ‘received’ stamp of September 24, 2018; and

123 Atamansit architectural plans – proposed – drawn by Jill Neubauer Architects consisting of:

- ‘The Cedars – Basement Plan – 08-29-2018’ with a Board date ‘received’ stamp of September 24, 2018
- ‘The Cedars – First Floor Plan – 08-29-2018’ with a Board date ‘received’ stamp of September 24, 2018

- 'The Cedars – Second Floor Plan – 08-29-2018' with a Board date 'received' stamp of September 24, 2018
- 'The Cedars – Exterior Elevations – 08-29-2018' with a Board date 'received' stamp of September 24, 2018
- 'The Cedars – Exterior Elevations – 08-29-2018' with a Board date 'received' stamp of September 24, 2018

Hearing:

Attorney Robert H. Ament reviewed the existing site and proposed plans with the Board. The existing dwelling is circa 1950 on the 1.33 acre site. He explained there was previously a second dwelling on site that had burned down and not reconstructed. The nonconformities of the existing one-story, three-bedroom dwelling are front yard setback of 15.7' to Atamansit Road and a 40' setback to the pond – these nonconformities will remain as existing. The proposed dwelling will be two-story and maintain the three (3) bedrooms. The height of the proposed dwelling from Atamansit Road will be 21' and the rear will be at 28' in height. Attorney Ament requested that the Board not condition the proposed basement to remain unfinished as they applicant may install another egress and utilize the basement space, with no intent to create additional bedrooms.

The Board discussed plans with Attorney Ament and requested a copy of the Order of Conditions from the Conservation Commission. Attorney Ament submitted the Order of Conditions and the Certificate from the Board of Health for proposed septic system. 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 Potamis made a motion to close the hearing. Member Murphy 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 123 Atamansit Road in Hatchville contains 1.33 acres of Agricultural A zoned land that is located within the Great Pond Coastal Pond Overlay District, the Water Resource Protection Overlay District and directly abuts the Coonamessett Pond that is within the Zone II Overlay. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming one-story, three-bedroom single-family dwelling on subject property. The existing structure has a setback to the front property line of 15.7' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the existing dwelling is 40' from the waters of the Coonamessett Pond that is requires a 50' setback under Section 240-68 D. of the Code of Falmouth. The proposed reconstructed dwelling will be two-stories with three (3) bedrooms and constructed in approximately same footprint with expansion southerly and northerly and with a second level. A new septic system has been approved by the Board of Health (copy of Certificate of Title submitted to the file).

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 will not be substantially more detrimental than what currently exists as the existing nonconforming setbacks will be maintained – not increased – and lot coverage will remain below the maximum percentage allowed under Section 240-69 A. of the Code of Falmouth. The Board further finds that the proposed reconstructed dwelling will greatly enhance the utilization of the dwelling for its occupants.

The Board finds that the existing cesspool(s) on subject property will be removed and a new septic system for a three-bedroom dwelling installed on site as shown in the “Plot Plan – Rebuild House” plans submitted to the file and approved herein. The Board further finds that the proposed dwelling height will be in compliance with Section 240-70 of the Code of Falmouth with a height of 21’ from the street grade (Atamansit Road).

The Board finds that the proposed raze and reconstruction of the existing dwelling on subject property has received approval from Conservation Commission in the form of an “Order of Conditions” decision (copy submitted to the file) and that the Board of Appeals herein adopts this decision as stated in the below conditions.

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 raze and reconstruction of the existing dwelling as the proposed reconstructed dwelling will not increase the nonconforming setbacks existing or create any new nonconforming setbacks; the dwelling will be less than the maximum 35’ height allowed under Section 240-70 of the Code of Falmouth; and the lot coverage will be in compliance pursuant to Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will 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 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 has been approved by the Board of Health with a copy of the Certificate of Title submitted to the file – the septic system is designed for a three (3) bedroom dwelling as proposed.

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 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 Potamis 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 Paul R. Dupee Jr, Trustee (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 123 Atamansit Road, Hatchville, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of the existing dwelling, construction of the proposed dwelling, all setbacks, height of dwelling, lot coverage, septic system 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:

“Plot Plan – Rebuild House” prepared for Paul R. Dupee, Jr. 123 Atamansit Road Hatchville, East Falmouth, Massachusetts as drawn by BSS Design Inc. consisting of:

- Sheet 1 of 3 ‘Existing Conditions and Removals’ dated June 25, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS - with a Board date ‘received’ stamp of September 19, 2018
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2. There shall be no more than three (3) bedrooms allowed on subject property.
3. There shall be no bedrooms or sleeping accommodations created within the basement (lower level) of the reconstructed dwelling approved herein.
4. The Board of Appeals herein adopts the conditions set forth by the Conservation Commission as stated within the “Order of Conditions”.
5. 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.

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: **087-18**

Applicant/Owner: **PAUL R. DUPEE JR., TRUSTEE**

Subject Property: **123 Atamansit Road, Hatchville, Massachusetts
Map 17 Section 01 Parcel 016 Lot 015**

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

ADP 8:55 am

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.