

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 114-18

APPLICANT/OWNER: Karen B. Munroe
36 Sherman Bridge Road, Wayland, MA

SUBJECT PROPERTY: 26 Ferry Road, Waquoit, Massachusetts
Assessor's Map: Map 32, Section 21, Parcel 001, Lot 022

DEED/CERTIFICATE: 208276 22 11210-C (SH 2)

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed on December 11, 2018, with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3 C. of the Code of Falmouth, to reconstruct the dwelling at 26 Ferry Road, Waquoit, Massachusetts (the "Premises").
2. Notice was duly given, as required by M.G.L. Ch. 40 A, § 11, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list.
3. The advertised public hearing was opened on January 17, 201. Present for the Zoning Board of Appeals were Terrence J. Hurrie (Chair), Kenneth H. Foreman (Vice Chair), Edward Van Keuren (Acting Clerk), Gerald Potamis (Associate Member), and Robert B. Dugan (Associate Member). Board member Paul Murphy was absent. Mr. Potamis and Mr. Dugan were appointed voting members for the hearing.

4. Jeffrey W. Oppenheim, Esq., Oppenheim & Nickerson LLP, 156 Locust Street, Falmouth, MA, appeared before the Board on the application.
5. The public hearing was closed on January 17, 2019, wherein the Board made a decision to grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
6. The documents and information received by the Zoning Board of Appeals, are on file in the office at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- “January 17, 2019 Comments to Falmouth Zoning Board of Appeals”, from Bob Wayland, 110 Seapit Road, East Falmouth, MA (abutter to the proposal), 5 pages, received January 17, 2019
- January 9, 2019 e-mail from Robert Wayland

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

- December 11, 2018 e-mail by Karen Munroe, providing authorization for representation
- December 21, 2018 letter from the Falmouth Conservation Commission, with attached Order of Conditions for 26 Ferry Road, dated 12/21/2018
- 13 photographs, stamped received January 17, 2019
- “Fact Sheet, Munroe Residence, 26 Ferry Road, Falmouth, MA”, date stamped received January 9, 2019
- Six photographs of existing structures, stamped received, December 11, 2018

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 1/8/19
- Conservation Commission, no comment, dated 1/14/19
- Board of Health, comments, dated 1/3/19
- Water, comment, dated 12/5/2018
- Assessors, no comments, dated 12/14/18
- Fire Department, no comments, dated 12/18/18
- Planning, no comments, dated 12/17/18

Plans submitted by Applicant/Applicant’s Representative

- “Planting Plan”, November 27, 2018, prepared by Blueflax Design LLC, Harwich, MA
- “Existing Conditions Plan for #26 Ferry Road”, prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, dated October 29, 2018
- “Plot Plan-Proposed House for #26 Ferry Road”, prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, dated October 29, 2018
- “Septic System Details for #26 Ferry Road”, prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, dated October 29, 2018

- “Munroe Residence, 26 Ferry Road, Falmouth, Ma, Existing Basement Plan, Sheet X-2”, “Existing First Floor Plan, Sheet X-1”, “South Elevation/North Elevation, Sheet A-2”, “West Elevation/East Elevation, sheet A-1”, “Basement Plan, Sheet A-4”, “First Floor Plan/Second Floor Plan, Sheet A-3”, all prepared by Yarosh Associates, Inc., Mashpee, MA, dated 7/2018

January 17, 2019 Hearing:

Appearing before the Board was Karen Munroe, property owner, with Jeffrey Oppenheim, her attorney. Mr. Oppenheim reported that Ms. Munroe lives in Wayland, but plans to move to Falmouth. He stated that they filed an application with the Zoning Board of Appeals, under § 240-3 C, to raze the existing three-bedroom house, garage/1-bedroom guest house on the lot, and reconstruct a three-bedroom dwelling on the lot. Mr. Oppenheim noted that the reconstruction would be an improvement on the Premises: currently both the garage/guest house and dwelling are sited within the 25-foot street setback, and are within 50-feet of a tidal river. The accessory structure is sited in the front yard. He reported that all the nonconformities would be eliminated, except the distance from the tidal river, which will be increased to 37 feet, from the existing 13.9 feet. Mr. Oppenheim also reported that the new septic system would be 100 feet from the wetlands, and meet Title 5, whereas the existing system is substandard.

Mr. Oppenheim reported that the easterly side of the dwelling would face the water, with the southerly side facing Ferry Road. He stated that the new dwelling would be two floors, with three bedrooms. The basement is planned to be unfinished, except for a bathroom, mechanical space and storage.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. Mr. and Mrs. Robert Wayland, 110 Seapit Road, and Judy Laughlin, 127 Seapit Road, spoke in opposition to the proposal. Katie Peterson, 108 Seapit Road, stated she wished neighbors could work together.

Mr. Oppenheim reported that the neighbors do not have a view easement, and that there are houses of a similar size to the proposal along Seapit River. He reported that the new house would also improve neighborhood property value. Mr. Oppenheim addressed neighborhood concerns expressed about an existing right-of-way, over a paper road, to the south of the Premises. He specified that this right-of-way is not on the subject lot, and that the stated concerns are currently in litigation.

Mr. Foreman made a motion to close the hearing. Mr. Dugan seconded the motion. The motion carried 5-0.

Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted for the hearing, and made the following findings:

The Premises is located at 26 Ferry Road, Waquoit, Massachusetts, and comprises 20,650 square feet of area, in Residence C zoned land. The Premises is accessed by Ferry Road, which becomes a paper road/right-of way, off Seapit Road. The Premises is nonconforming, due to deficient lot area and street frontage.

The Applicant applied under Section(s) 240-3 C. of the Code of Falmouth, to allow reconstruction of a three-bedroom dwelling. The replacement dwelling will be sited 10.9 feet from the north, 37 feet to the east, 25.5 feet from the south, and 50.7 feet from the west lot lines. The impervious surface is being decreased from 3,841 square feet to 3,549 square feet. The lot coverage by structures is being increased from 2,818 square feet, or 13.6% to 2,985 square feet, or 14.5%. The lot coverage by structures, parking and paving will be 3,309 square feet, or 16%. The height of the dwelling will be 34 feet, 0.6 inches. The Applicant has an Order of Conditions from the Conservation Commission, dated 12/21/2018.

The Board noted neighborhood concerns about the replacement dwelling, however, found that the proposed changes to the pre-existing nonconforming dwelling, and garage/accessory structure constituted an improvement to setbacks, an improved septic system, additional distance from the tidal river, a reduction to a single structure, and within height limitations, and was therefore not substantially more detrimental to the neighborhood than the existing dwelling.

In addition to the above findings, the Board finds that the proposed reconstruction will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as 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 dwelling, with the lot coverage by structures being increased from 13.6 % to 14.5 %, which is below the 20% maximum coverage allowed within the By-Law. Two structures are being removed from encroachment into the southerly street setback, and located further from the tidal river.

B. The site is suitable for the proposed use, as the property is zoned residential, and has been used as such since its inception. Two structures are being replaced with one.

C. There will be no impact on traffic flow and safety; plans include a two-car garage, and driveway for parking.

D. There does not appear to be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties; the dwelling is proposed to be 34 feet, 0.6 inches in height, which is under the maximum height of 35 feet, within the By-Law, and the dwelling meets the required setbacks to lot lines.

E. The Board of Health noted a three bedroom septic limitation for the proposal. A substandard septic system is being eliminated, and the replacement system will meet Title 5.

G. The replacement dwelling 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 in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed replacement dwelling at the Premises, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative

effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Mr. Foreman made a motion to grant the Special Permit with conditions. Mr. Van Keuren seconded the motion; with a unanimous 5-0 vote.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0, to grant a special permit under Section(s) 240-3 of the Code of Falmouth, to allow construction of a replacement dwelling. This special permit shall be subject to the following conditions:

1. The dwelling shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
 - "Planting Plan", November 27, 2018, prepared by Blueflax Design LLC, Harwich, MA
 - "Plot Plan-Proposed House for #26 Ferry Road", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, dated October 29, 2018
 - "Septic System Details for #26 Ferry Road", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, dated October 29, 2018
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2. The dwelling is limited to a maximum of three bedrooms.
3. The maximum height of the dwelling shall be 34 feet, 0.6 inches. The Applicant shall provide an As-built plan to both the Zoning Board of Appeals, and the Building Department, certifying the height of the structure, prior to the issuance of a Certificate of Occupancy.
4. Any deviation, no matter how minor, from plans submitted and approved, 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 comply with the Conservation Commission's Order of Conditions, including landscaping requirements, as well as any other Board or department having jurisdiction over the proposal.
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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may 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 Zoning Board of Appeals.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Edward Van Keuren, Acting Clerk, Zoning Board of Appeals

RECEIVED
JAN 30, 2019 PM 2:43
TOWN CLERK


Date Filed With Town Clerk