



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 004-19
APPLICANT/OWNER: Jason W. DiFederico and Christine DiFederico
22 Mt. Vernon Street, Charlestown, Massachusetts
SUBJECT PROPERTY: 11 Plymouth Drive, East Falmouth, Massachusetts
Assessor's Map: Map 32, Section 17, Parcel 000H, Lot 027
DEED/CERTIFICATE: Book# 31726 Page# 112
SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. An application was filed on January 15, 2019, with the Zoning Board of Appeals, for a Special Permit, pursuant to Section(s) 240-69 E. of the Code of Falmouth, to reconstruct the dwelling at 11 Plymouth Drive, East Falmouth, 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 hearing was opened on February 21, 2019. Board members Terrence J. Hurrie, (Chairman), Kenneth H. Foreman (Vice Chairman), Edward Van Keuren (Member), Robert Dugan (Associate), and Gerald Potamis (Associate) were present. Mr. Van Keuren was appointed Acting Clerk. Mr. Potamis and Mr. Dugan were appointed voting members for the hearing.
4. Appearing before the Board was Kevin P. Klauer II, Esq., Ament Klauer LLP, 39 Town House Square, Falmouth, MA, representing the Applicants.
5. 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

- None

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

- “Lot Comparison, 11 Plymouth Drive, East Falmouth, MA”; date stamped Jan 15, 2019, update date stamped Feb 21, 2019
- November 20, 2018 letter of authorization for representation, signed by Jason Difederico (sic), and Christine Difederico (sic)
- Email from Kevin P. Klauer II, dated February 20, 2019, 3:52 p.m. and 4:53 p.m.
- Email from Kevin P. Klauer II, dated February 8, 2019
- Four photographs of existing dwelling, date stamped Jan 30, 2019

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 2/8/19
- Conservation Commission comments, dated 1/8/19
- Board of Health comments, dated 2/15/19
- Water comment, dated 1-15-2019
- Assessors comments, dated 1/22/19
- Fire Department, no comment, dated 1/18/19
- Planning, no comments, dated 1/16/19

Plans submitted by Applicant/Applicant’s Representative

- “Site Plan, 11 Plymouth Drive, East Falmouth, Massachusetts”, prepared by United Consultants Inc., 850 Franklin Street, Suite 11D, Wrentham, MA, rev. dated 2/19/19
- “Site Plan, 11 Plymouth Drive, East Falmouth, Massachusetts”, prepared by United Consultants Inc., 850 Franklin Street, Suite 11D, Wrentham, MA, dated December 27, 2018 (superseded)
- “Existing Floor Plan, 11 Plymouth Drive”, date stamped received Jan 30, 2019
- “Proposed Cape, 11 Plymouth Drive, E. Falmouth, MA”, including Sheets A1, A2, and A5, rev. dated 01-10-19, and Sheets A3, and A4, dated December 2018; all prepared by Packert Design, 266 Park Street, North Attleboro, MA

February 21, 2019

Appearing before the Board was Kevin P. Klauer II, with Jason W. DiFederico, 22 Mt. Vernon Street, Charlestown, Massachusetts, property owner for 11 Plymouth Drive, East Falmouth, Massachusetts (the “Applicant”), and the Applicant’s builder. Mr. Klauer II stated that the Premises is located in the Residential C zoning district, and the existing dwelling comprises a single-story, two-bedroom dwelling. The plan is to reconstruct a two-story, three-bedroom dwelling on the Premises. Mr. Klauer II noted that the proposed replacement dwelling has been approved for a four-bedroom septic from the Board of Health, due to the planned “bonus room”, which would qualify as a bedroom for the Board of Health.

Mr. Klauer II stated that he provided the Board with a spreadsheet, to compare the proposal with neighboring lots and dwellings. He stated that they are seeking a special permit to exceed 20% lot coverage, proposing a lot coverage of 22.3%, and noting that seven dwellings in the neighborhood

exceed 20% lot coverage. Mr. Klauer II reported that dwelling is only over 20% by 185 square feet, which is related to the proposed 2-car garage.

Mr. Klauer II stated that the reconstruction would not affect neighbors, and would not impact views. He noted that the plan was revised for engineering, and that the driveway will be pervious. The height of the dwelling shall be 29 feet, 1 inch, which is in keeping with the neighborhood.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. No one appeared.

Mr. Potamis made a motion to close the hearing. Mr. Van Keuren 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 subject site is located at 11 Plymouth Drive, East Falmouth, Massachusetts (the "Premises"), and comprises 7,986 square feet of area, in the Residential C zoning district, as well as the Waquoit Bay Coastal Pond Overlay District. Residential C zoning requires a minimum lot area of 40,000 square feet. The Premises has 75.00 feet of street frontage on Plymouth Drive, in a district requiring a minimum of 100 feet of frontage and lot width. The proposed replacement dwelling will be sited 28.6 feet from the north (street) lot line, and 14.3 feet from the east, 27.1 feet from the south, and 16.6 feet from the west side lot line. The Residential C minimum setback from the street is 25 feet, and the minimum setback from the side and rear lot lines is 10 feet. The replacement dwelling shall be 29 feet, 1 inch in height. The Premises is nonconforming due to deficient lot area and street frontage.

No opposition was expressed regarding the proposal.

The Board thereby found that the proposed changes were therefore not substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

In addition to the above findings, the Board finds that the proposed construction 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 use. The lot coverage by structures will be increased from 13.8 % to 22.8 %, and the lot coverage by structures/ paving/parking will be increased from 13.8 % to 30.3 %. While the proposal will be exceeding the 20% lot coverage by structures, the Board found that that the proposal fit into the neighborhood, and was less than the 25% maximum of the By-Law section 240-69 E. The lot coverage by structures/ paving/parking will be less than the 40% maximum allowed.
- B. The site is suitable for the proposed use, as the property is zoned Residential C, with neighboring single-family residences.
- C. There will be no impact on traffic flow and safety.

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, given that the dwelling meets all setback requirements.

E. There will be no impact on sewage disposal, source of water, and drainage; a four-bedroom septic is proposed, replacing a failed septic system.

G. The reconstruction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no requirement for review by the Planning Board, and they issued no comment on January 16, 2019.

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 reconstruction 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 dwelling to the neighborhood.

Mr. Dugan made a motion to grant the Special Permit with conditions. Mr. Van Keuren seconded the motion; followed by 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- 69 E. of the Code of Falmouth, to allow a replacement single family dwelling. This special permit shall be subject to the following conditions:

1. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
 - "Site Plan, 11 Plymouth Drive, East Falmouth, Massachusetts", prepared by United Consultants Inc., 850 Franklin Street, Suite 11D, Wrentham, MA, rev. dated 2/19/19
 - "Existing Floor Plan, 11 Plymouth Drive, date stamped received Jan 30, 2019
 - "Proposed Cape, 11 Plymouth Drive, E. Falmouth, MA", including Sheets A1, A2, and A5, rev. dated 01-10-19, and Sheets A3, and A4, dated December 2018; all prepared by Packert Design, 266 Park Street, North Attleboro, MA
2. The replacement dwelling will be sited 28.6 feet from the north (street) lot line, and 14.3 feet from the east, 27.1 feet from the south, and 16.6 feet from the west side lot line.
3. The maximum height of the dwelling shall be 29 feet, 1 inch.
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 engineering comments regarding management of stormwater, as well as any Town Boards or departments having jurisdiction over the development.
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.



Terrence J. Hurrie, Chairman, Zoning Board of Appeals

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MAR 5, 2019 AM 9:29
TOWN CLERK



Date Filed With Town Clerk