



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: #036-19

APPLICANT/OWNER: Thomas E. and Colleen E. Nicholson

SUBJECT PROPERTY: 14 Beatrice Street, North Falmouth, Massachusetts

Assessor's Map: Map 04A Section 44 Parcel 000 Lot 036

DEED/CERTIFICATE: Certificate No. 172873

SUMMARY: Special permit issued, with conditions

PROCEDURAL HISTORY

1. On May 23, 2019, the Applicant filed an application with the Zoning Board of Appeals, requesting a Special Permit, pursuant to Section(s) 240-3.C. and 240-69. E. of the Code of Falmouth, to reconstruct the dwelling, exceeding 20% lot coverage, on subject property at 14 Beatrice Street, North Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on July 18, 2019, at which hearing, relevant testimony was heard.
5. Appearing before the Board was Kevin P. Klauer II, of Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA.

6. The public hearing was closed on July 18, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Edward Van Keuren, Robert B. Dugan, Gerald Potamis, and James T. Morse, made a decision to grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.

7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- Letter dated July 1, 2019 from Gregory A. and Joanne G. Rucki, 10 Hunt Street, North Falmouth – stating support
- Letter dated July 8, 2019 from Don and Susan Flynn, 5 Hunt Street, North Falmouth – stating support
- Letter dated July 18, 2019 from Brian and Mary Lou O'Rourke, 1 Hunt Street, North Falmouth – stating support

Letters/Referrals/E-mails from Town Departments

Referrals sent to: Assessors, Building, Conservation, Engineering, Health, Fire Department, Planning, Board of Selectmen, Water Department and Wastewater

- Email dated May 29, 2019 from Amy Lowell, Wastewater Superintendent re: New Silver Beach sewer service
- Email dated July 1, 2019 from Scott McGann stating: *I defer to comments from Amy Lowell*
- Referral from Planning Department, dated May 24, 2019 – no comment
- Referral from Falmouth Fire Rescue Department, dated May 24, 2019 – no comment
- Referral / letter from Wastewater Superintendent, Amy Lowell dated May 28, 2019 - with comments regarding New Silver Beach by-laws, and that a variance would need to be obtained from the Selectmen to increase the bedroom count
- Referral from the Assessing Department, dated May 29, 2019 – no comment
- Referral from Conservation, dated May 30, 2019 – no comment
- Referral from the Water Department, dated June 4, 2019 signed by Greg Powers stating: *Water service needs to be upgraded from ¾" inch line to 1 inch line, 200 psi*
- Referral from the Engineering Department dated June 25, 2019, signed by Scott Schluter, PE with standard comments and; *the plans show a proposed paved driveway connecting to Beatrice Street within the Town right of way. A driveway permit from the DPW Engineering Division will be required. What is shown on the plan would receive an approved permit. The Town will not accept storm water runoff from impervious driveways. We request that the Board either require the applicant to obtain an approved driveway permit from the Engineering Division prior to closing the hearing of this special permit, or that the Board include the following condition if the special permit is approved: "The applicant shall obtain an approved driveway permit and post any required bond with the Engineering Division prior to start of construction. The applicant shall complete the work as approved by the Engineering Division in the Driveway Permit."*
We recommend that the Board add a condition that requires the addition of dry wells, rain garden, or other storm water measure for the roof area.

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

- Attorney Klauer submitted application, filing fee, owner authorization letter and lot coverage calculations
- Letter dated May 23,2019 from Attorney Klauer re: front yard designation
- Email dated July 17,2019 from Attorney Klauer re: revised site plans

Plans submitted by Applicant/Applicant's Representative

- (4) picture of existing conditions, not dated, with a 'Board Received' stamp of May 22,2019;
- ' 14 Beatrice Street, North Falmouth – Existing Floor Plan' hand drawn floor plan, not authored, date stamped received May 22, 2019;
- 'Plot Plan – Existing Conditions' for #14 Beatrice Street prepared for Thomas and Colleen Nicholson in Falmouth, drawn by Falmouth Engineering, 17 Academy Lane – Suite 200, Falmouth, MA 02540, dated May 6, 2019 sheet 1 of 2;
- 'Plot Plan – Proposed House' for #14 Beatrice Street prepared for Thomas and Colleen Nicholson in Falmouth, drawn by Falmouth Engineering, 17 Academy Lane – Suite 200, Falmouth, MA 02540, dated May 6, 2019 sheet 2 of 2;
- 'Plot Plan – Proposed House' for #14 Beatrice Street prepared for Thomas and Colleen Nicholson in Falmouth, drawn by Falmouth Engineering, 17 Academy Lane – Suite 200, Falmouth, MA 02540, dated May 6, 2019; with a revision date of May 23, 2019 sheet 2 of 2;
- 'Plot Plan – Proposed House' for #14 Beatrice Street prepared for Thomas and Colleen Nicholson in Falmouth, drawn by Falmouth Engineering, 17 Academy Lane – Suite 200, Falmouth, MA 02540, dated May 6, 2019; revised May 23, 2019 with a final revision date of July 16, 2019 sheet 2 of 2;
- 'Exterior Elevation and Details' A2 Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, dated April 1, 2019 with a final revision date of May 20, 2019 sheet 2 of 5;
- 'Exterior Elevation, Foundation Plan and Details', A3, Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, dated April 3, 2019 with a final revision date of April 9, 2019 sheet 3 of 5;
- ' First and Second Floor Plane Framing Plan and Details', A4, Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, dated April 3,2019; revised April 9, 2019 with a final revision date of May 30 , 2019 sheet 4 of 5; and
- 'Framing and Cross Sections and Framing Plans', A5, Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, dated April 3, 2019 with a final revision dated of April 9, 2019 sheet 5 of 5

Hearing:

July 18, 2019

Mr. Dugan read the Notice of Public Hearing and referrals into the record. He reported that there were three letters of support in the file.

Kevin P. Klauer II, of Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA, appeared, representing Thomas and Colleen Nicholson, 14 Beatrice Street, North Falmouth, Massachusetts, owners (the Applicant). Mr. Klauer II stated that the proposed replacement dwelling will be conforming to all district setback requirements. The lot comprises 10,285 square feet, and is zoned Single Residence C. The property is presently nonconforming due to lot coverage by structures at 26.7%.

The proposed replacement dwelling will comprise a 3-bedroom dwelling, within two floors, and will have an attached garage, resulting in a lot coverage by structures of 22.1%. The Building Commissioner has designated Beatrice Street (west side) as the front yard. Hunt Street runs along the northerly side of the Premises. The total lot coverage is proposed to be 37.6%, which is below the 40% maximum. The new ridge height will be 27 feet, 5 inches, and the proposal meets the criteria of By-Law section 240-216. Mr. Klauer stated that the only dimensional nonconformity will be eliminated, and that lot coverage comparison calculations were submitted to the file.

In response to a Board inquiry, Mr. Klauer II stated that the existing shed, sited at the southeasterly corner of the Premises will remain, and that the lot is not in the flood zone. He also stated that the proposed office has at least a 4-foot cased opening, so as not to count as a bedroom.

No one appeared in favor of, or in opposition to the proposal.

Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Morse, and voted unanimously seconded the motion.

FINDINGS

There was no previous Zoning Board of Appeals case for the Premises.

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

The Premises is sited in the Single Residence District C, and comprises 10,285 square feet of area. The existing lot coverage by structures is 26.7%, which shall be improved to 22.1%. Lot coverage by structures is allowed up to 25%, by special permit from the Zoning Board of Appeals. The current lot coverage by structures/parking/paving is 31.7%, and will be increased to 37.6%, which is below the 40% allowed. The Premises is presently nonconforming due to lot coverage, as well as the existing encroachment of the northerly side of the dwelling into the Hunt Street setback, and the encroachment of the shed into the easterly rear lot line.

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 comprises 10,285 square feet, and lot coverage by structures will be 22.1%. According to the neighborhood lot comparison data submitted, 7 other dwellings are currently 2 stories, and 12 dwellings exceed 20% lot coverage.

B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with neighboring single-family residences. There were three letters of support received, and no one appeared in opposition to the proposal.

- C. There will be no impact on traffic flow and safety.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the height of the proposed dwelling will be 27 feet, 5 inches, which is below the 35-foot height limitation.
- E. The Premises is in the New Silver Beach sewer service area. The bedroom count is strictly limited to three. The office and play room shall have a minimum 4-foot cased opening.
- F. The Premises is adequate for utilities and public services; water service will be upgraded to 1 inch. Drywells were added to the site plan to address Engineering concerns.
- G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no requirement for site plan review by the Planning Board, and they issued no comment on May 24, 2019.
- I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein. Beatrice Street has been designated as the front yard by the Building Commissioner, which allows a reduced setback to Hunt Street as a side yard. The shed may be no closer than three feet from any side lot line.
- 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 of the 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 to the neighborhood.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0, following a motion made by Mr. Dugan, and seconded by Mr. Potamis, to grant a special permit, with conditions, under Section(s) 240-3.C. and 240-69. E. of the Code of Falmouth, for 14 Beatrice Street, North Falmouth, Massachusetts (the "Premises"), to allow reconstruction of the 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:
 - 'Plot Plan – Proposed House' for #14 Beatrice Street prepared for Thomas and Colleen Nicholson in Falmouth, drawn by Falmouth Engineering, 17 Academy Lane – Suite 200, Falmouth, MA 02540, dated May 6, 2019; revised May 23, 2019 with a final revision date of July 16, 2019 sheet 2 of 2;
 - 'Exterior Elevation and Details' A2 Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, revision dated May 20, 2019 sheet 2 of 5;
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- ' First and Second Floor Plane Framing Plan and Details' A4 Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, revision dated May 30 , 2019, sheet 4 of 5; and
 - 'Framing and Cross Sections and Framing Plans' A5 Plans for Beatrice Road Falmouth, MA, drawn by RJD Architectural Designs, Norfolk MA, 02056, revision dated April 9, 2019, sheet 5 of 5
2. The bedroom count is limited to three.
 3. The height shall be 27 feet, 5 inches.
 4. The Applicant shall obtain an approved driveway permit, and post any required bond with the Engineering Department, prior to construction. No stormwater runoff is allowed from the Premises. The water line shall be upgraded to a 1-inch service.
 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. 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.)
 6. 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.



Robert B. Dugan, Zoning Board of Appeals

RECEIVED
AUG 14, 2019 PM 1:35
TOWN CLERK

Date Filed With Town Clerk