



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 066-19

APPLICANT/OWNER: Michael J. and Lucille A. McGourty, 74 Hobart Street, Braintree, Massachusetts

SUBJECT PROPERTY: 10 Cypress Street, Teaticket, Massachusetts

Assessor's Map: Map 39A Section 28 Parcel 000 Lot 117

DEED/CERTIFICATE: Certificate: 185914

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On September 23, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. and 240-69 E. of the General Code of the Town of Falmouth, to allow replacement dwelling at 10 Cypress Street, Teaticket, 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 November 7, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Mary Barry.
5. Michael J. McGourty, homeowner, appeared before the Board on the application.

6. The public hearing was closed on November 7, 2019, following motion made by Mr. Foreman, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning 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/Information from Applicant/Representative(s)

- Lot Coverage/Bulk Calculations Worksheet, date stamped received Sep 23, 2019

Letters/Referrals/E-mails from Town Departments

- Referral dated October 25, 2019 from the Conservation Commission, attached to "Request for Determination of Applicability, October 16, 2019, signed October 17, 2019
- Referral dated September 23, 2019 from the Health Department, the property is in the LPSSA sewer system, however tie-in permit is still open. E-mail dated September 23, 2019 indicates that attic space would count as a bedroom; property limited to four bedrooms. October 17, 2019 email from Scott McGann: one bedroom will be a sewing room, with a wide cased opening.
- Referral dated September 25, 2019 from the Fire Department – no comment
- Referral dated September 23, 2019 from the Planning Department – no comment
- Referral dated September 24, 2019 from Assessing – includes Land Court lots 117 and 118
- Referral dated September 30, 2019 from the Engineering Department signed by Scott Schluter, PE: all portions of roof to be connected to dry wells; stormwater must not be directed off site

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

Letters/E-mails from Abutters/Interested Parties

- E-mail letter from Trent Toran-Sandlin, dated November 1, 2019, commenting on the private way, and parking on the other side of the street, on Sandlin family property; four photographs attached.
- Plans submitted by Applicant/Applicant's Representative
- "Plot Plan – Existing House", prepared by Falmouth Engineering, dated September 10, 2019
- "Plot Plan – Proposed House", prepared by Falmouth Engineering, dated September 10, 2019
- "Proposed McGourty Residence, 10 Cypress Street, Falmouth, MA, including cover and sheets 1-5, dated 8-19-19, not authored

Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Michael McGourty, 10 Cypress Street, Teaticket, Massachusetts, owner, who stated he seeks to reconstruct the dwelling, to include a full basement and additional space. He reported that the road is in land court, but that they plan to pave it with asphalt.

The Board noted that the Premises is in an AE 12 flood hazard zone, which would preclude mechanicals from being located in the basement, however the plans show mechanicals located in the basement. Mr. McGourty stated that the mechanicals would be relocated on the second floor or attic. The Board noted that the sewing room appears as though it could constitute a bedroom, and that they would condition the opening to the room as being cased. Mr. McGourty agreed to the cased opening.

The Board also expressed concerns about the visual bulk and mass of the proposed dwelling. Mr. McGourty stated he could look into window changes for the rear of the proposal. He also stated he would tie in the roof to drainage, and close the sewer permit.

There was no public comment. Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted. The Board proceeded to deliberate.

Findings:

The subject property, 10 Cypress Street, Teaticket, Massachusetts (the "Premises") is located in the Single Residence C zoning district, and the Little Pond Coastal Pond Overlay District. The proposal is to reconstruct the dwelling to be no closer to the street than 16.6 feet (matching the existing setback), 10 feet from the east, 28 feet from the north, and 13 feet from the west, conforming to district side lot line setbacks. The ridge height will be 32 feet, 6 inches. The existing lot coverage by structures is 23.6%, which will be increased to 24%. The lot coverage by structures/parking/paving is currently 25.8%, which will be increased to 27.8%. Bulk calculations were submitted to demonstrate that lot coverage lies within the neighborhood measurements.

The owner has met with the Conservation Commission, and has a "Request for Determination of Applicability, signed October 17, 2019. Where the Premises is located in AE12 flood hazard zone, the first floor has been elevated, and mechanicals shall be move out of the basement. All surfaces of the roof shall be tied to drywells.

The Premises is limited to four bedrooms, as part of the Little Pond Sewer Service Area (LPSSA). The sewing room shall have a minimum four-foot cased opening, in order to not be utilized as a bedroom. The owner shall close out the sewer tie-in permit.

In addition to the above findings, the Board finds that the proposed dwelling 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, comprising 4,800 square feet of area.
- B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with similar sized neighboring lots, with single family dwellings. The owner may revise the rear windows to break up the mass of the dwelling.
- C. There will be no impact on traffic flow and safety, given that the proposal is for a replacement dwelling.
- 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 reconstruction will match the existing setback from the

street, and will meet district required setbacks for the east, north and west side setback requirements. No abutters appeared in opposition to the proposal; one abutter issued a letter with concerns.

E. The Board of Health has reported that the dwelling is limited to four bedrooms, and requires closing the sewer tie-in permit.

F. Utilities will be appropriate for the new construction.

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

H. No Site Plan Review was required, and the Planning Board issued 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 replacement dwelling at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special 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, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 C and 240-69 E of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted 5 to 0, to grant a special permit, for the dwelling to be reconstructed at 10 Cypress Street, Teaticket, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be as shown on the plans:
 - "Plot Plan – Proposed House", prepared by Falmouth Engineering, dated September 10, 2019
 - "Proposed McGourty Residence, 10 Cypress Street, Falmouth, MA, including cover and sheets 1-5, dated 8-19-19, not authored
2. The 36-foot by 30-foot dwelling shall be sited no closer to the street than 16.6 feet (matching the existing setback), 10 feet from the east, 28 feet from the north, and 13 feet from the west side lot lines. The ridge height will be 32 feet, 6 inches. The lot coverage by structures will be 24%. The lot coverage by structures/parking/paving will be 27.8%.
3. Abide by Town Engineering requirements, where no stormwater may be directed off the Premises; all portions of the roof shall be connected to installed drywells.
4. The Premises is limited to four bedrooms in the LPSSA. The room labeled "sewing room" on the plans shall be revised to provide a minimum four-foot cased opening, and shall not be used as a bedroom. Attic space is limited to ½ story.

5. Where the Premises is located in AE12 flood hazard zone; the owner shall move mechanicals out of the basement.
6. The owner shall close the sewer tie-in permit prior to a final Certificate of Occupancy.
7. The owner shall submit a final As-Built to the Zoning Board of Appeals prior to the Certificate of Occupancy.
8. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request.
9. 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.)
10. This special permit shall lapse three 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.
11. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss any unresolved matters of concern.

Action: The Zoning 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.

The Zoning Board of Appeals, by the signature below, certifies the vote of the Board:

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Edward Van Keuren, Falmouth Zoning Board of Appeals

RECEIVED

DEC 3, 2019 AM 10:17

TOWN CLERK

Date Filed With Town Clerk