



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: #079-19

APPLICANT/OWNER: John W. and Gina Shuck  
9 Chadwick Drive, Dover, Delaware

SUBJECT PROPERTY: 25 Wood Neck Road, West Falmouth, Massachusetts  
Assessor's Map: Map 49A Section 05 Parcel 000 Lot 047

DEED/CERTIFICATE: 208462

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On November 13, 2019 an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. of the General Code of the Town of Falmouth, to reconstruct the dwelling at 25 Wood Neck Road, West 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 January 9, 2020. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.
5. Attorney Kevin P. Klauer, II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, Massachusetts, appeared before the Board, representing the Applicant.

6. The public hearing was closed on January 9, 2020, following a motion made by Mr. Dugan, 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)

- November 1, 2019 letter from John W. and Gina Shuck, authorizing Ament Klauer LLP to act as agent
- November 13, 2019 letter from Kevin P. Klauer, II

Letters/Referrals/E-mails from Town Departments

- Referral from Conservation dated December 16, 2019 – attached comments
  - Order of Conditions from Conservation Commission, dated 11/27/2019
- Referral from Planning dated November 14, 2019 – no comment
- Referral from Fire Department dated November 14, 2019 – no comment
- Referral from Assessor's dated November 19, 2019 – no comment
- Referral from Engineering dated December 18, 2019 by Scott Schluter: stormwater runoff shall not be directed on to abutting property or right of ways; comply with Conservation Commission requirements
- Referral from Board of Health, dated 11/18/2019-variances granted for three bedroom septic system  
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

None

Plans submitted by Applicant/Applicant's Representative

- "Proposed Site Improvements", prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, rev. dated 10-31-19
- "Shuck Residence, 25 Wood Neck Road, Falmouth", including "Cover sheet A0.0", "Overview, A0.1", "First Floor Plan, A1.1", "Second Floor Plan, A1.2", "Third Floor Plan, A1.3", "Roof Deck, A1.4", "Elevations, A2.1", "Elevations, A2.2", "Area Plans, A6.0", "Window & Door Schedule, A7.0", "Existing Plans, Ex0.1", and Existing Elevations, Ex0.2", all prepared by Longfellow Design Build, 367 Main Street, Falmouth, MA, date 11-26-19

Hearing:

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

Appearing before the Board was Kevin P. Klauer, II, representing John W. and Gina Shuck, 9 Chadwick Drive, Dover, Delaware, owners of 25 Wood Neck Road, West Falmouth, Massachusetts (the

"Applicant"). Mr. Klauer II stated that the Premises abuts Little Sippewissett Marsh, and is sited in the AE 15 flood zone. He noted that the Premises is nonconforming where it is existing as 34 feet from the 3-foot contour, where the minimum By-Law setback requirement is 50 feet. The existing garage is 19.6 feet from the 3-foot contour line. He noted that according to flood zone regulations, the elevation must be changed to be 1 foot above the 15-foot flood elevation. This will result in a dwelling with a ridge height of 34.5 feet, and a lot coverage by structures of 13%, represents 600 feet of additional footprint space in the footprint. Mr. Klauer reported that there would be no new nonconformities created. He stated that the Board of Health issued a variance for a three-bedroom enhanced nitrogen removal septic system.

No one further appeared on the application. Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject property, 25 Wood Neck Road, West Falmouth, Massachusetts (the "Premises"), comprises 15,065 square feet of upland area, in the Single Residence B zoning district, and within a State and local wetland buffer area, in an AE 15 and VE 17 flood hazard area. The proposal has been reviewed by the Conservation Commission, and an Order of Conditions was issued. The Premises is nonconforming where it comprises 15,065 square feet of area in a district requiring 40,000 square feet, and has 75 feet of frontage, in a district requiring a minimum of 100 feet. The existing dwelling and detached garage are sited closer than 50 feet from the tidal pond.

The proposed dwelling will be in substantially the same location as the existing dwelling. The replacement dwelling will comply with flood zone requirements, being 1 foot above the 15 foot average elevation. The dwelling is proposed to be sited 55 feet from the northerly 4-foot elevation NGVD29, 12.3 feet from the westerly side lot line, 34 feet from the easterly 4-foot elevation NGVD29, and 75 feet from the south (street lot line), in a district requiring a minimum of 25 feet from the street, 10 feet from side and rear lot lines, and 50 feet from the three-foot NGVD elevation.

Due to a 600 square foot increase in the foundation, the proposed replacement dwelling (with existing garage and gazebo) will result in the lot coverage by structure increasing from 9% to 13%, in compliance with the maximum 20% lot coverage provision of the By-Law. The lot coverage by structures/parking/paving will increase from 20% to 23%, in compliance with the maximum lot coverage of 40%. The building height will be 34.5 feet. The dwelling have a total of three bedrooms. The Board of Health issued a variance, and approved a new enhanced nitrogen removal septic system to be installed.

The existing garage will remain at 8.8 feet from the street, 19.6 feet from the 4-foot contour to the east, and 15.8 feet from the west side lot line.

Town Engineering expressed concern about stormwater runoff, but deferred to conditions issued by the Conservation Commission regarding erosion and sediment control measures.

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.

The Zoning Board of Appeals weighed the effects of the dwelling reconstruction 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 of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted unanimously, to grant a special permit, for the reconstructed dwelling at 25 Wood Neck Road, West Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be substantially as shown on the plans:
  - "Proposed Site Improvements", prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, rev. dated 10-31-19
  - "Shuck Residence, 25 Wood Neck Road, Falmouth", including "Cover sheet A0.0", "Overview, A0.1", "First Floor Plan, A1.1", "Second Floor Plan, A1.2", "Third Floor Plan, A1.3", "Roof Deck, A1.4", "Elevations, A2.1", "Elevations, A2.2", "Area Plans, A6.0", "Window & Door Schedule, A7.0".
2. The dwelling shall be sited 55 feet from the northerly 4-foot elevation NGVD29, 12.3 feet from the westerly side lot line, 34 feet from the easterly 4-foot elevation NGVD29, and 75 feet from the south (street lot line), in a district requiring a minimum of 25 feet from the street, 10 feet from side and rear lot lines, and 50 feet from the three-foot NGVD elevation. The proposed replacement dwelling (with existing garage and gazebo) will result in a change in lot coverage by structure of 13%, in compliance with the maximum 20% lot coverage provision of the By-Law. The lot coverage by structures/parking/paving will be 23%, in compliance with the maximum lot coverage of 40%. The building height will be 34.5 feet, and is limited to three bedrooms.
3. Due to the proposed height being close to the maximum height allowed within the By-Law, the Zoning Board of Appeals requires a height certification to be done at framing, with a copy to the Board.
4. A final As-Built plan shall be provided to the Zoning Board of Appeals.
5. The Applicant shall comply with Town Engineering and Conservation Commission requirements regarding requests that stormwater runoff not being directed on to abutting property or right of ways. All staging of materials and construction vehicles shall be within the Premises.
6. The Premises is limited to three bedrooms with the variance issued by the Board of Health for the enhanced nitrogen removal septic system.
7. The address of the Premises shall be properly posted in compliance with §99-1, prior to a final sign off for the building permit.

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  
FEB 4, 2020 AM 9:49  
TOWN CLERK  
\_\_\_\_\_

Date Filed With Town Clerk