



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 019-20

APPLICANT/OWNER: John A. Mannix, Jr. and Carmel A. Shields

409 Heath Street, Chestnut Hill, Massachusetts

SUBJECT PROPERTY: 10 Crown Avenue, Falmouth, Massachusetts

Assessor's Map: Map 46B Section 07 Parcel 004 Lot 007

DEED/CERTIFICATE: Book 32809, Page 82

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On April 14, 2020, an application was filed with the Zoning Board of Appeals requesting a modification of Special Permit #066-88, under §240-3.C. and §240-69E. of the General Code of the Town of Falmouth, to allow a raze and reconstruction of the existing cottage at 10 Crown Avenue, 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. The previous Zoning Board of Appeals case for the Premises included
4. The advertised public hearing was opened on May 14, 2020. Voting Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Edwin Zylinski.

5. Kevin P. Klauer II, Ament Klauer, 39 Town Hall Square, Falmouth, MA, Jill Neubauer, architect, and Timothy Santos, project engineer, appeared before the Board on the application.
6. The public hearing was closed on June 11, 2020, following motion made by Mr. Foreman, seconded by Mr. Dugan, and unanimously voted, with a vote scheduled on a draft Decision on June 25, 2020. 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)

- Amended Application form, date stamped April 14, 2020 with Town Clerk
- April 14, 2020 letter from Kevin P. Klauer
- Application form, date stamped March 20, 2020 with Town Clerk
- April 14, 2020 letter of representation by John A. Mannix, Jr.
- March 17, 2020 letter from Holmes and McGrath, Inc., signed by Timothy M. Santos
- June 10, 2020 letter from Kevin P. Klauer
- Title 5 inspection for 10 Crown Ave., dated 09-08-2018
- Copy of Quitclaim Deed, dated 04-06-2020 by the Registry of Deeds
- May 12, 2020 letter from Kevin Klauer, with attached Lot comparison worksheet
- 1950 Town of Falmouth Aerial photograph

Letters/Referrals/E-mails from Town Departments

- June 3, 2020 email from Noreen Stockman to Kevin Klauer, regarding modifying the previous special permit, and proof of dating of cottage
- May 14, 2020 email from Scott Schluter to Noreen Stockman, regarding cobblestone apron and fencing in road layout
- May 13, 2020 email from Scott McGann, Board of Health, regarding septic system
- April 8, 2020 referral from Scott Schluter, engineering, including address assignment
- March 25, 2020 referral from the water department regarding meter pit
- March 25, 2020, no comment from fire department
- March 24, 2020, no comment from Planning Board
- March 31, 2020, Assessor notes property previously using address 41 Forest Avenue
- March 20, 2020 email from Ashley DeMello to Tim Santos, submission requests
- Previous Zoning Board of Appeals Decision, Special Permit #66-88, filed with the Town Clerk on Sept. 9, 1988

Letters/E-mails from Abutters/Interested Parties

Plans submitted by Applicant/Applicant's Representative

- "SSK-2 (Parking Exhiit) (sic), for #10 Crown Avenue", prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA, dated 5/27/20
- "Plan of Proposed Cottage", prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA, rev. dated 5/27/20, signed June 2, 2020

- “Mannix Cottage”, prepared by Jill Neubauer architects, 15 Depot Avenue, Falmouth, MA, sheet A101, revised 06.05.202 (sic); sheets A201, A202, EC101, EC201, and EC202 all date stamped received ZBA April 14, 2020

Hearing:

May 14, 2020

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

Appearing before the Board was Kevin P. Klauer II, who stated that 10 Crown Avenue, Falmouth, Massachusetts (the “Premises”) comprises 4,287 square feet of area in the Single Residence B zoning district. He reported that the Premises is improved by two dwellings: a main house and a smaller, 2-bedroom cottage. The cottage is nonconforming to the front yard setback (east) at 16.4 feet, the north side yard setback at 2.5 feet, and lot coverage by structures at 35.9%. The existing ridge height of the cottage is 13 feet, and the ridge height of the house is 23.3 feet. Mr. Klauer stated that the Applicants seek to replace the cottage with a new 1-bedroom cottage.

The proposed cottage would be similar in design to the main house and will have a slightly reduced footprint from what exists. Lot coverages by structures will be decreased by 0.4 to 35.5%, and the proposed ridge height will be increased to 19.3 feet. Mr. Klauer suggested that the cottage has met the January 1, 1981 date, referenced in the original special permit from 1988, acknowledging that there were 2 dwelling units on the Premises at the time of that permit. Mr. Klauer submitted a lot coverage analysis to demonstrate that out of the 45 properties within a 300-foot radius, 21 have larger gross building area, 25 have larger footprints and 23 have a larger percentage of lot coverage. He opined that this proposal was in line with the neighborhood, and he reported that it had been before the Historical Commission.

Ms. Neubauer stated that the replacement cottage was designed to architecturally match the style of the existing dwelling, and that the cottage would have a cathedral ceiling over the kitchen, with a small loft over the bedroom. She reported that the existing cottage is in poor condition structurally.

The Board inquired about proof that the second dwelling was in existence prior to May 19, 1959, which is the date specified in the current By-Law, by which a second dwelling must be in existence, in order to qualify as a pre-existing, nonconforming use. The 1988 permit was issued for the main house, and not the cottage; no dating was provided for the cottage. The Board also noted that according to plans submitted, there was fencing, a cobblestone apron, and driveway parking area within the Town’s right-of-way that would need to be relocated within the Premises. The proposed landing for the cottage would be limited to a maximum 4-foot by 4-foot landing, to not further encroach into the street setback.

Mr. Dugan made a motion to continue the hearing to June 11, 2020, which was seconded by Mr. Van Keuren, and unanimously voted. The Board announced the continuation date, which was also filed with the Town Clerk, and posted on the Town’s website.

June 11, 2020

Mr. Klauer II stated that they will relocate the fencing and cobblestone apron onto the Premises. He also reported that they possess a Title 5 report for a six-bedroom septic system. He noted that they were unable to find proof to establish that the cottage was in existence prior to May 19, 1959, therefore, they

have agreed to remove cooking facilities from the cottage. In this way, it would not be a second dwelling; just an accessory building to the main house. The main house will comprise 4 bedrooms, and the cottage shall contain one bedroom.

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

Findings:

The subject property, 10 Crown Avenue, Falmouth, Massachusetts (the "Premises") is located in the Single Residence B zoning district. The proposal is to reconstruct the existing cottage on the Premises. The ridge height of the cottage shall change from 13 to 19.3 feet. The existing lot coverage by structures is 35.9 %, which will be decreased to 35.5 % (where the maximum allowed is up to 25% by special permit). The lot coverage by structures/parking/paving is currently 62%, which will be decreased to 61.9% (where the maximum allowed is 40%). The 24.3-foot by 17.4-foot cottage is proposed to be 16.4 feet from the east street line (Forest Avenue), 2.8 feet from the north side lot line, 29.2 feet from the west side lot line, and 2.8 feet from the main dwelling to the south. A landing is proposed at the easterly side of the dwelling, facing Forest Avenue).

1. The Zoning Board of Appeals Decision in 1998 reported that the cottage was in existence prior to that decision, but no actual date of construction was provided. The applicant reported an inability to provide documentation that the cottage predated the May 19, 1959 date, as provided for in the By-Law, to establish a second dwelling unit on the Premises. The applicant has agreed to remove cooking facilities within the cottage.
2. The single bedroom in the cottage on the Premises will comply with the 6-bedroom septic system, for which a Title V permit was issued in 2018, where the main house has 4 bedrooms.
3. The applicant has established that there exists space on the Premises to provide for a replacement septic system, should that be required.
4. The Premises was the subject of a previous Zoning Board of Appeals Decision in 1998, where the work was proposed on the main house. A modification of that special permit was requested; however, the Board determined that this approval would properly be issued a separate special permit.
5. Due to the size of the Premises and lot coverage by structures, there is limited parking available within the Premises. The current parking area encroaches southerly into the Town's road layout for Crown Avenue. The Applicant shall provide three parking spaces within the Premises.
6. Engineering has required a correction to the address of the cottage, provision made for capture of stormwater, and no increase in stormwater leaving the Premises. Engineering has also requested that cobblestones and fencing in the road layout be removed to allow for snow removal.
7. No new nonconformities are created, and modest improvements are designed for lot coverage by structures, and lot coverage by structures/parking/paving.
8. The replacement cottage will fit within the character of the neighborhood.

In addition to the above findings, the Board finds that the proposed reconstruction 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 raze and reconstruction of the cottage on 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 of 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 249-69E of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Zylinski, voted 5 to 0 to grant a special permit, for the cottage to be reconstructed at 10A Crown Avenue, 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:
 - "SSK-2 (Parking Exhiit) (sic) for #10 Crown Avenue", , prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA, dated 5/27/20
 - "Plan of Proposed Cottage", prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA, rev. dated 5/27/20, signed June 2, 2020
 - "Mannix Cottage", prepared by Jill Neubauer architects, 15 Depot Avenue, Falmouth, MA, sheet A101, revised 06.05.202 (sic); sheets A201, A202, EC101, EC201, and EC202 all date stamped received ZBA April 14, 2020
2. The 24.3-foot by 17.4-foot cottage shall be 16.4 feet from the east street line (Forest Avenue), 2.8 feet from the north side lot line, 29.2 feet from the west side lot line, and 2.8 feet from the main dwelling at the south. The ridge height of the cottage shall be 19.3 feet. The cottage shall be limited to a maximum 4-foot by 4-foot landing facing the east street (Forest Avenue).
3. The applicant shall abide by Town Engineering requirements, where no increase in stormwater may be directed off the Premises, in accordance with the Town's "Soil Erosion & Sediment Control Standard Conditions". Drywells shall be installed to capture new roof runoff, as approved by Town Engineering.
4. The Applicant shall eliminate the meter pit, and install the water shutoff inside the cottage.
5. The accessory cottage shall be numbered **10A Crown Avenue**, and must have properly affixed legible address numbers in accordance with §99-1, prior to the Certificate of Occupancy. (The former address used was 41 Forest Avenue.)
6. The Applicant shall permit the Assessor to view the reconstructed cottage prior to the issuance of the Certificate of Occupancy.
7. The Applicant shall employ best management practices to limit and manage dust control during demolition.
8. Cobblestones, fencing and parking area sited in the Town's right-of-way shall be removed prior to the issuance of a final Certificate of Occupancy for the cottage.

9. Parking is not allowed in the road layout; the Applicant shall insure that the property line is demarcated, and parking for three vehicle remains on the Premises.
10. The applicant shall coordinate and consult on any construction activities which may impede traffic flow with the police department. Construction materials and equipment shall be maintained on the Premises.
11. The cottage shall remain as an accessory structure to the main house, and is conditioned that there be no cooking facilities within the cottage.
12. The cottage shall be limited to a single bedroom.
13. Hours of construction shall be limited to Monday through Saturday, between 7:00 a.m. and 7:00 p.m. There shall be no construction on Sundays or holidays, absent an emergency.
14. Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at www.mass.gov/guides/court-system-response-to-covid-19. Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.
15. Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry, and a copy shall be provided to the Zoning Board of Appeals. The Barnstable County Registry of Deeds continues to accept filings by postal mail during this period, and permit holders are requested to file for recording through this method to the extent possible.
16. 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 Zoning Board of Appeals may deny the request.
17. 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.

True Copy Attest:



 Noreen H. Stockman, Zoning Administrator

RECEIVED
 JUN 30. 2020 AM 9:10
 TOWN CLERK

 Date filed with the Town Clerk