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Zoning Board of Appeals
Minutes of August 3, 2023 at 6:30PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy, Petrucci

Public Comment – none

#051-23 Aveni, 42 Squibnockett Drive, East Falmouth – requesting a Special Permit to expand the existing second floor, and make minor modifications to include a porch and new stairs

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Murphy read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Planning – no comment

Water - “The plan does not show any changes to the existing water service.”

Conservation – “A Request for Determination of Applicability has been filed for the above referenced property and is scheduled for the July 12, 2023 Conservation Commission Hearing.”

Engineering - comments; defer to the Conservation Commission for stormwater management and construction erosion controls

Email dated 7/31/23 from Scott McGann, Health Agent

Email dated 7/31/23 from Alissa Bergeron, Conservation Agent

Correspondence - none

Kevin Klauer, attorney for Applicants – The Applicants are seeking a Special Permit to alter the nonconforming dwelling by expanding the 2nd floor. This property is located at the northern end of Central Avenue. The lot is 12,188 s/f located within an Agricultural B zoning district and not within a flood zone. Presently, there is a 5-bedroom, single-family dwelling with a footprint that is just under 2,000s/f. The property is nonconforming to the front lot line being 21.9’ and the rear setback to the 3’ contour line being 42’. They are proposing a modest addition to expand the existing second floor. There will be a reduction in the numbers of bedrooms from 5 to 4. The proposal only adds 61s/f due to the cantilevered fireplace, porch and steps. The ridge height will be 29’ 6 ½” and the lot coverage by structures will remain well below the allowable at 16.9%. Attorney Klauer opined that the project meets the criteria of 240-10.2A and 240-12.1E.

Board Discussion

Petrucci – I think this project will fit into the neighborhood well.

Murphy – Were the stairs not approved?

Klauer – I’m not aware of that; we would have to conform to whatever Conservation approves. I was not at the Conservation hearing but spoke with the Engineer. He said that it had gone well, but did not mention about anything not being approved. If there happens to be a slight change to the plans, we can handle that administratively.

Duffy – I found it difficult to find where you were expanding the 2nd floor.

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Klauer – The existing is more of a Cape style house, where as the proposed is more of a Colonial style; you can see it better looking at the elevations.

Public comment – none

Finneran made a motion to close the hearing. Murphy seconded the motion. Motion carried 5-0. Peterson made a motion to grant application #051-23. Murphy seconded the motion. Motion carried 5-0.

Findings

- 1) Property located within an Agricultural B district, Waquoit Bay Coastal Pond Overlay, within flood zone X and AE 12
- 2) Lot is 12,180s/f
- 3) Private road
- 4) Existing lot coverage 16.4% / 21.98%; proposed 17.4% / 22.8%
- 5) 1 previous decision
- 6) Reduction in bedroom count 5-4; septic system is suitable for 5-bedrooms (Board of Health)
- 7) Non-conforming to the front yard setback at 21.9', and setback to the 3' contour line of 42'
- 8) No new non-conformities being created
- 9) Meets criteria of 240-10.2A and 240-12.1E
- 10) Conservation approval
- 11) Structure is not located within the flood zone, but front of property is

Conditions

- 1) Per plans
- 2) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 3) Comply with Conservation approval
- 4) Revised plans submitted for Administrative Approval if needed
- 5) Material and vehicles to be kept on site; if unable to, contact Police Department for detail

All in favor.

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#053-23 Stinnett Trustees, 5 Harbor Hill Road, Woods Hole – requesting a Special Permit to construct an addition exceeding 20% lot coverage by structures

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Morse – We have had a request to continue this Applicant to September 7, 2023.

Murphy made a motion to continue application #053-23 to September 7, 2023. Peterson seconded the motion. Motion carried 5-0.
All in favor.

Application #	Applicant Name:	Address:
	Stinnett, Trustee	5 Harbor Hill Rd
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / See	6/8/23	Klaum
owner authorization		
L/C calculations		
Front yard designation		
(9) copies plot plan		
(9) sets arch. plans		
Request Abutts	6/8/23	Ⓚ
Request referls.	6/8/23	Ⓚ
Email to k. klaum	6/9/23	Ⓚ
Prefere - Assessors	6/9/23	Ⓚ
Prefere - Planning	6/9/23	Ⓚ
Rec'd Cert. Abutts List	6/12/23	Ⓚ
Prefere - H2O	6/15/23	Ⓚ
Prefere - ConCom	7/6/23	Ⓚ
Prefere - Fire	7/7/23	Ⓚ
Prefere - Health	7/11/23	Ⓚ
Prefere - Eng.	7/12/23	Ⓚ

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#055-23 Brennan, Trustees, 28 Nemasket Road, West Falmouth – requesting a Special Permit to raze and rebuild the nonconforming, detached accessory structure

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Murphy read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Assessors – request inspection prior to CO

Water - “Accessory structure – if a water service is required for the accessory structure it must be a new 1” water service. The water meter must be installed inside the accessory structure. Existing Service – the Water Department recommends that the existing service be upgraded to a 1” service, the meter pit eliminated, and the water meter be installed inside the existing dwelling”.

Fire – no comment as presented

Engineering - comments; recommendations to condition the addition of drywells or other stormwater infiltration measure(s); the secondary assigned address will be 28A Nemasket Road; comply with section 99-1; recommendation to add a limit of work to protect the abutting property; defer to the Conservation Commission if stormwater management and construction erosion controls are needed

Email dated July 7, 2023 from Alissa Bergeron – ConCom agent

Email dated July 31, 2023 from Scott McGann, Health Agent

2 previous special permits

Correspondence – none

Kevin Klauer, attorney for Applicants – The Applicants are seeking permission to raze and rebuild the existing, nonconforming accessory structure. This lot is 35,166 s/f located within the Residential B zoning district and located within a flood zone. The southern end of the lot where the dwelling is located is in a Velocity zone, and the accessory structure is located within the AE15 flood zone. Presently, there is a 4-bedroom single-family dwelling, and a 2-story structure with 2-bedrooms and recreation space; the total footprint is 3,878s/f, or 12.35% lot coverage. The accessory structure is nonconforming because it’s in the front yard, at 21’3” from the street, but otherwise conforms to setbacks and lot coverage requirements. The Applicants purchased this property in 2014 and the structure is not in the best shape. They are looking to rebuild it to fit aesthetically with the house. They have been making improvements to the primary dwelling and landscaping over the past few years. The proposed structure will have 2-bedrooms, one to be used as an office. They plan to create storage space within the basement that is not to be finished, so that it would be in compliance with the flood zone standards. Lot coverage will be 13.5% and

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total lot coverage will be 25.08%. The nonconforming front yard setback will be slightly improved, from 21'3" to 25'5", and the proposed ridge height will be 21'9". We did submit a revised plan showing the limit-of-work. Attorney Klauer opined that the project meets the criteria of 240-10.2A and 240-12.1E.

Board Discussion

Morse – Having read the 1994 Special Permit and Variance, it references a garage with workspace; there is nothing else in the file about building permits. How did we end up getting to a garage with 2-bedrooms, that aren't clearly referenced in the previous permits? Can you give us a timeline?

Klauer – It's not a dwelling. The Brennan's have owned the property for more than 10 years, and it was in existence before they purchased it. Improvements or alterations, even without the benefit of a Special Permit become legally nonconforming after 10 years. There is no prohibition against additional habitable space, as long as the septic has the capacity. I don't know what happened between 1994-2014. It's not a dwelling; there is not cooking facilities, and we aren't proposing any.

Duffy – The 10 year statute gives you the status as a legal, nonconforming structure, but not the use.

Klauer – The use is not nonconforming because are allowed additional habitable space; its accessory habitable space, not a 2nd dwelling.

Duffy – There are 2 bedrooms in there; are there any cooking facilities?

Klauer – There are no cooking facilities. There might be a refrigerator, but it's the cooking facilities that render it a dwelling. There are none, and we are proposing none, and we would be happy to condition that.

Murphy – The Engineering Department is calling this a 2nd dwelling.

Klauer – It's not a dwelling. The Engineering Department requires a separate address to identify it in case of a fire.

Murphy – The Special Permit was for a garage. Now there are bedrooms; there's not even a garage door.

Klauer – This is how it was when they purchased it 10 years ago.

Morse – This is a very nice project, there is no opposition, but I would like to see submissions or affidavits saying they bought the property 10 years ago, and this is how we found it.

Finneran – I looked in the windows; they're telling the truth.

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Murphy – Was the pool already there?

Klauer – No, the pool was recently added along with the shed and gazebo.

Andrea Brennan, owner / Applicant – When we bought the property, there were barn doors, and they were replaced with the slider. The shed by the driveway was rebuilt. There was a shed in back and that was rebuilt. The gazebo is totally new and everything else has been replaced. There was a little living area downstairs, 2 rooms and a bathroom upstairs.

Murphy – Had they already put the bathroom in?

Brennan – Yes.

Public Comment – none

Murphy made a motion to close the hearing. Finneran seconded the motion. Motion carried 5-0.

Morse – When these situations come up in the future, I would prefer having affidavits in the file.

Finneran made a motion to grant application #055-23. Murphy seconded the motion. Motion carried 5-0.

Findings

- 1) Lot size is 35,166 s/f located within a Residential B zoning district and AE15/ VE17 flood zones
- 2) Previous Special Permit / Variance
- 3) Private road
- 4) Existing lot coverage 12.35% / 22.20%; proposed lot coverage 13.51% / 25.08%
- 5) Proposed ridge height of accessory structure - 21'
- 6) No letters in file, no opposition at hearing
- 7) Special permit was for garage and workshop; testimony – Applicant purchased property that had been converted into habitable space, and is more than 10 years old. Site visit from Mr. Finneran indicated that space was more than 10 years old.

Conditions

- 1) Single-family use only for Premises
- 2) No cooking in Accessory structure
- 3) Accessory structure not to be rented
- 4) Comply with Engineering Department comments

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5) Comply with Water Department comments

6) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency

7) Maintain vehicles and materials on site in unable to do so, contact Falmouth Police Department for detail

8) Comply with Conservations approval

All in favor.

Application #	Applicant Name:	Address:
055-23	Brennan, Trts	28 Nemasket Rd
Document (s) Submitted:	Date Submitted:	Submitted By:
Application Fee	6/9/23	Klauer
owner authorization	}	}
(9) copies site plan		
(9) sets arch plan		
Request ABUTTS	6/10/23	Ⓚ
Request replns	6/12/23	Ⓚ
Referral - Assessors	6/13/23	Ⓚ
Preins SPDs	6/13/23	Ⓚ
Email to agent	6/12/23	Ⓚ
Referral H2O	6/15/23	Ⓚ
Referral - fire	7/7/23	Ⓚ
Referral email ^{com}	7/7/23	Ⓚ
Referral Eng.	7/12/23	Ⓚ
Revised site plans	7/12/23	Ⓚ
Revised site plans	7/25/23	Ⓚ
Email S. McGam	7/31/23	Ⓚ

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#058-23 Geraghty, 32 Cove Street, East Falmouth – requesting a Special Permit to raze and rebuild the existing, non-conforming, single-family dwelling

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Murphy read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Water – no comment

Planning – no comment

Fire – no comment

Engineering – comments; defer to ConCom for stormwater and erosion and sediment controls; comply with section 99-1

ConCom- meeting is 8\9

BOH – assessed 5 BR reduced to 4 BR, has an IA system that was approved

Kevin Klauer– attorney for Applicant –The Applicant is seeking permission to raze and rebuild the existing, nonconforming dwelling. This property is located on an inlet of Great Pond on a lot of 13,365 s/f, located within the Residential B zoning district and within the AE 13 flood zone. Presently, there is a 5-bedroom, single-family dwelling with a footprint of just under 1,400 s/f. It’s nonconforming to the front yard setback being 21’.6”, rear yard setback to the 3’ contour line being 18’, and nonconforming to flood zone requirements, as there is a finished basement. The dwelling was built in 1969, and is in need of significant repairs and updates; given the scope of work and the requirements with the flood zone, they are proposing to raze and rebuild, in order to come into compliance with the flood zone standards. The proposed structure will have all habitable space and mechanicals at least 1’ above the flood zone elevation, which will be about 6’ above existing grade. The proposal does not create any new nonconformities, the front yard setback will remain unchanged and the rear year yard setback to the contour line will be improved from 18’ – 20’; lot coverage will increase to 16.5% . The bedroom count will increase to 4, but the Applicants will be installing a denitrification system. We did have 1 meeting with the Conservation Commission and that went well. They asked for a few minor modifications and we hope to get approval next week; a lot of mitigation plantings are proposed. This proposal will allow for better utilization of the property, will not create and new nonconformities and will bring the property into FEMA flood zone compliance. Attorney Klauer opined that the project meets the criteria of 240-10.2A and 240-12.1E.

Board Discussion

Murphy – I met with a neighbor who was very happy about it.

Peterson - The 33’ height; is that to the top of the glass?

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Klauer – No, that’s not included. We can have the plan revised to include that, although it could be considered a decorative feature.

Petrucci– It will be an improvement for the neighborhood.

Public Comment – none

Murphy made a motion to close the hearing. Peterson seconded the motion. Motion carried 5-0.

Peterson made a motion to grant application #058-23. Murphy seconded the motion. Motion carried 5-0.

Findings

- 1) Property is located within a Residential B zoning district, Great Pond Coastal Pond Overlay, Search and Rescue Overlay, and AE13 and 14 flood zones
- 2) No previous decisions
- 3) Existing lot coverage 10.3% / 17.4%; proposed lot coverage 16.7% / 20.1%
- 4) Private road
- 5) Proposed ridge height 34’ .3”
- 6) 3’ contour line will improve by 2’; front yard setback will remain unchanged
- 7) 4-bedrooms; denitrification system will be installed
- 8) Meets criteria of 240-10.2A and 240-12.1E
- 9) Property will comply with FEMA requirements
- 10) No new non-conformities will be created

Conditions

- 1) Per plans
- 2) Construction Hours: Monday – Friday 7A-7P, Saturday’s 8A-4P; no Sunday’s or Holidays absent an emergency
- 3) Comply with the Engineering Departments referral
- 4) Height certificate at framing and completion; prior to C.O.
- 5) Incorporate ConCom’s decision
- 6) As-built for foundation (setbacks); verify prior to C.O.

All in favor.

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Open Meeting

- 1) Vote Minutes: June 29,2023 and July 20,2023 - tabled
- 2) Request for Insubstantial Change(s) #050-20 and #050-23, Village at Brick Kiln LLC, 511 Brick Kiln Road, West Falmouth – vote anticipated
Stockman – Request has been withdrawn.
- 3) Authorize Zoning Administrator to apply for MassHousing Grant and to seek any additional assistance – vote anticipated
Stockman – The application process cannot take place until the application has been filed with us; I have been in contact with MassHousing already, regarding the pre-application. Finneran made a motion to authorize the Zoning Administrator to apply for grants with MassHousing. Peterson seconded the motion. Motion carried 7-0.
All in favor.
- 4) Board Discussion - none
- 5) Board Updates –
Stockman - We are moving forward with the bylaw updates. Frank and I have been working on the Home Occupation and Home Based Service Business Sections; we are merging these two sections so people are better able to understand. I will forward around the draft to the Board for any additional comments.
- 6) Future Agenda Items - none

Meeting adjourned 7:25PM

Respectfully submitted,
Ashley E. DeMello, Office Assistant
Board of Appeals