

Zoning Board of Appeals Decisions Decisions for: 11-06-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 62-14

APPLICANT: JOHN P. SHANLEY of Lexington, MA

OWNER: G & J Realty Trust, Gilda Shanley, Trustee

DEED/CERTIFICATE: Certificate 191243, Lot A – Plan 11210 B

SUBJECT PROPERTY: 28 Waquoit Landing Road, Waquoit, Massachusetts
Map 32, Section 22, Parcel 007, Lot 000A

Under a date of July 28, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 B. of the Code of Falmouth to allow the continued use of three dwellings in a structure since 1970 on Residential A zoned property that is known as 28 Waquoit Landing Road, Waquoit, Massachusetts.

A public hearing was opened on September 25, 2014. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan and Member Matthew McNamara

Clerk Bielan read the Notice of Public Hearing into the record.

Clerk Bielan read correspondence from Mr. Shanley into the record that states he would like to withdraw the application without prejudice.

Mr. Shanley was not present.

Member McNamara asked why the applicant is requesting a withdrawal. Administrator Budrow stated that the applicant applied under the conversion bylaw as an appraiser told him that the units existing within the structure are not legal. She explained that at the time of application the office did not know of an existing variance from 1970 for subject property as it was filed under the old street name [Seapit Road]. The applicant uses and said he will continue to use the property for family only and has no intention of renting out units and therefore would like to withdraw as he believes the variance protects the current use.

Member McNamara commented on the variance that does not state that there are three units in the structure; and he noted that a special permit from 1987 requesting conversion was denied. He said he feels Mr. Shanley should have been present for this request.

Member Cool suggested that the property has a variance that allows the use as a single-family dwelling with no renting of units.

Chairman Haddad stated he feels he cannot ignore this as he has a single-family dwelling and you [Member Cool] have a single-family dwelling – no additional units within; the variance says to be used as a single-family dwelling – it doesn't say three units.

Member Foreman said he would like clarification on the variance.

Member Foreman made a motion to continue the hearing to November 6, 2014 at 6:30 pm and have Town Counsel review the variance. Member McNamara seconded the motion. Motion carried 4 – 1 with Member Cool in opposition.

Board voted 4 -1 to continue the hearing to November 6, 2014 at 6:30 PM.

Continuation: November 6, 2014 – Selectmen’s Meeting Room Town Hall

#62-14 – Shanley, 28 Waquoit Landing Rd., Waquoit, MA

Board Members sitting: Chairman David Haddad, Vice-Chair Kenneth Foreman, Clerk Kimberly Bielan and Member Matthew McNamara

John Shanley, applicant/owner, is present and stated that he apologizes for not attending the first hearing as he truly believed that his letter of withdrawal would be allowed and granted. He stated that he reviewed the last hearing [off website] and believes the Board has an issue with the variance granted in 1970; specifically if it was for two or three units. He said the plans submitted in 1970 for the variance are the same plans he submitted for this application – the plans are stamped by a professional engineer and dated March 19, 1970. The application in 1970 showed that the owner wanted to add an apartment to the existing dwelling for the mother; and the variance was approved based on the plans which clearly show 3 units and show the dwelling as it currently exists since he purchased the property in 1988. Mr. Shanley said he believes the variance prohibits the use of the property by more than one family, which is how he has used it for the past 26 years and intends to continue using it as such. He said therefore he has no need for a special permit and he respectfully requests again, that the Board accepts his withdrawal of the application for subject property.

Member McNamara stated he has reviewed the property and Town records and feels that in 1970 a variance was granted for an addition to the structure and it appears that the Board addressed the conditions necessary to grant a variance under our current bylaws [240-203]; this was not a ‘use variance’; the variance was approved as “permission to add an addition on to his present dwelling located on 28 Seapit Road, Waquoit, to be used as Living Quarters” and conditioned that: “1. The house shall always be considered a single family residence and it will be used by the petitioner and members of his family. 2. It shall not be sold or rented or utilized for more than one family.” Then in 1987 the then owner applied for a special permit to convert what was described by the owner as the existing two dwelling unit into three dwelling units which was denied on October 21, 1987. He noted that the next day there were complaints filed with the Building Commissioner alleging that the owner was renting a portion of the dwelling to non-family members in violation of the 1970 variance; which the Building Commissioner investigated and deemed that the party in question was a family member (domestic help) as defined by the zoning bylaw and that no rent was involved.

Member McNamara said it appears that the applicant, Mr. Shanley, purchased the property on June 1, 1988. In August of 2014 he applied for a special permit to allow the continued use of three dwellings in the structure as he was told by an appraiser that the dwelling units may not be legal. He said in his opinion the 1987 permit denial is unimportant, but it is noted that in the then owner’s application it was stated that there were two dwelling units with no verification that it was so. He stated there is no protection for non-complying uses. Mr. McNamara said in his opinion what should currently exist at subject property is a single-family dwelling use which is defined as: the continued use as a room or enclosed floor space within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. The use of the structure for three dwelling units was, according to Town records, never allowed and whether the application is heard pursuant to 240-23 B. or 240-3 E. [new amnesty bylaw], the Board would need to make appropriate findings at a hearing – the request for withdrawal prevented the Board from doing that. Mr. Shanley [applicant] has stated that the current use is for his family only and not rented. If the use is a single-family use then there may not be a use violation. However, he said he assumes that the Building Commissioner would also look to see if there were more than one room or enclosed floor space within the structure used or intended for use by separate families for living, sleeping, cooking and eating – that would be the Building Commissioner’s determination – not this Board’s. He said he feels the bottom line is that only one dwelling is currently allowed at 28 Waquoit Landing Road and he believes the Board needs to reinforce that.

Member McNamara made a motion to close the hearing. Member Bielan seconded the Motion. Motion carried 4 to 0.

Board discussed.

The Board finds that there is a variance from 1970 on subject property for the structure only; any use other than single-family use is not protected and is subject to enforcement. The condition of the variance was that the property be maintained and used as a single-family dwelling and shall only be sold as a single-family dwelling and not used by a separate family outside of the owner of subject property. The Board further finds that the intent of the applicant is to maintain subject property according to the variance with use only by his family members or domestic help. Furthermore, the Board finds that no multi-family use has been nor is authorized on subject property and no multi-family structure has been or is authorized on subject property.

Member McNamara made a motion to deny the Special Permit request before the Board. Member Bielan seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to Deny the Special Permit requested by John Shanley (herein referred to as applicant) regarding property known as 28 Waquoit Landing Road, Waquoit, Massachusetts.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 62-14

Applicant: JOHN P. SHANLEY of Lexington, MA

Subject Property: 28 Waquoit Landing, Waquoit, Massachusetts
Map 32, Section 22, Parcel 007, Lot 000A

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Deny the application.

David Haddad, Board Chairman

Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section

17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

62-14 Shanley - 28 Waquoit Landing Rd / SP Convert - Denied posted 11/19/14 mm