

## Zoning Board of Appeals Decisions Decisions for: 09-25-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 68-14

APPLICANT/OWNER: LORING S. FLINT, JR. and NANCY S. FLINT of McLean, VA

DEED/CERTIFICATE: Certificate 195343 – Lot 243, LC Plan 12009-86

SUBJECT PROPERTY: 162 Saconesset Road, West Falmouth, Massachusetts  
Map 36, Section 03, Parcel 019, Lot 243

Under a date of August 8, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to raze and reconstruct two dwellings (main dwelling and pool house) on subject property located at 162 Saconesset Road, West Falmouth, 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, Member Matthew McNamara and Associate Mark Cool

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

Attorney Robert H. Ament was present on behalf of the applicant and introduced Raul Lizardi-Rivera the project engineer with Holmes & McGrath, Inc. who will be available to answer questions the Board may have. Attorney Ament explained that the two structures have been existing since 1956, prior to May 19, 1959; and the current owners bought the property in 2011. The applicants would like to raze the main dwelling and the pool house and construct new dwelling and pool house. The existing dwelling is 21.8' from the front property line; the proposed dwelling will maintain that setback. The pool house will be wider and taller than the existing structure. Lot coverage will be reduced from 24.4% to 24.1% [by structures]. Conservation Commission has reviewed the project and the project is pending their approval. The dwelling and the pool house are currently serviced by cesspools that will be abandoned and a new Title V septic system will be installed 100' away from the top of the coastal bank. The existing dwelling has three bedrooms and the proposed dwelling will have four bedrooms. The pool house has two existing bedrooms and two proposed.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted from the Engineering department stated: This application was reviewed only for impacts to public right of ways and public utilities. Saconesset Road is a private right of way in this area. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters or right of ways.

A referral submitted from Lt. Mel Trott, Fire Prevention Officer stated he had no concerns with the project.

Referrals submitted by the Building Department and Planning Department had no comment.

The Board of Health Agent, David Carignan sent the Zoning Administrator an e-mail that stated the project is proposed to have six bedrooms at build-out; the site and septic plans in file propose a septic system upgrade capable of supporting seven bedrooms.

Clerk Bielan noted two affidavits submitted to the file regarding the existence of a pool house, time-

frame of pool house, its use and contents.

#### Board Questions:

Member Foreman asked for description of the existing pool house.

Attorney Ament explained there are two bedrooms, each approximately 10' x 6.5', a bathroom and a kitchen [through separate entrance]. The pool house is seasonal and not heated. He said the pool house meets the definition of a dwelling unit; it was constructed in 1956 – prior to May 19, 1959 (Section 240-3 A); and the applicant has no intention of renting it.

Member Bielan asked about the proposed pool house.

Attorney Ament stated that the proposed pool house will be heated and there is a sitting room in the proposed pool house where there was not one in the existing.

Member Bielan asked about the possibility of improving the nonconforming setback [of main dwelling to front line].

Attorney Ament said if the dwelling is moved back it will create Conservation Commission issues; and the applicant does not want to decrease the proposed dwelling – there is nothing more detrimental by what is proposed.

Member McNamara commented that it was stated the pool house was constructed in 1956 and asked Attorney Ament if there is any further evidence of the property use other than the affidavits submitted.

Attorney Ament stated there are aerial pictures and a land court plan from 1995. He suggested that Assessors' records may have date of structures.

Member McNamara asked if the bedroom sizes in the existing pool house meet the definition of a bedroom and how many occupants do they serve.

Attorney Ament stated that the bedrooms may not meet the current CMR criteria for a bedroom but did when they were created; they may serve possible only two individuals.

Member Haddad asked about proposed drywells and if there are any other accessory structures proposed on site.

Attorney Ament stated there are drywells shown on the plan ["Plan of Proposed Sewage Disposal System date revised on 9/9/14]; and there are no other accessory structures proposed.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

#### Board Discussion:

Member McNamara said he doesn't believe the burden of proof has been met as to the 'two dwellings' on this lot. He said he sees the pool house as an accessory structure – its appearance is that of a changing room and a kitchen. The existing pool house is too small for today's standards [bedrooms size and separated kitchen]; he said he has no issues with the main dwelling. He commented that the size of the pool house is proposed as double in size and questions: should this stay in the same footprint? And should the kitchen stay?

Chairman Haddad agreed noting that he believes it is a cabana with his and her dressing rooms; the kitchen is separate from the changing rooms. He said he believes it to be an accessory structure – not a dwelling.

Member Bielan agreed stating that the kitchen is separate from the changing rooms and that the use appears to be accessory to the pool. She commented that the affidavits submitted state 'seasonal use' and 'pool house'. She said she believes this to be use for pool.

Member Cool questioned if there is any further information on the structure and its use; are there public health concerns. He suggested it appears to be primary use for the pool.

Attorney Ament spoke briefly with the applicants and returned to the Board and said the applicant will accept a condition that there be no cooking facilities of any kind in the structure, although they would like to have a refrigerator and sink and the use of a grill outside of the structure.

Chairman Haddad asked if they discussed the possibility of decreasing the footprint of the accessory structure proposed.

Attorney Ament stated no, the project meets the definition under Section 240-3.

Board discussed: Member Bielan stated that the applicant is working with the Board and the bylaw allows for the proposed project as represented.

Member McNamara stated that it accomplishes what the Board had a concern with and asked how many bedrooms will be on subject property through the proposed plan.

Attorney Ament stated that the septic system is design for five (5) bedrooms in the main dwelling and two (2) in the pool house – so a total of seven (7) bedrooms. He said that the plans will be revised to eliminate the cooking facilities within the pool house structure.

Member Foreman asked what the height of the main dwelling will be.

Attorney Ament stated it is less than 31' [35' is maximum height according to Section 240-70 of the Code of Falmouth].

Member Bielan made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 – 0.

Chairman Haddad closed the Hearing.

#### Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 162 Saconeset Road in West Falmouth contains 45,463 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to raze and reconstruct the existing nonconforming single-family dwelling and the existing pool house structure on subject property. The dwelling structure has a nonconforming front yard setback of 21.8' that is required to be 25' pursuant to Section 240-68 A. of the Code of Falmouth. The lot coverage by structures is nonconforming at 24.4% that is required to be no more than 20% in a residential district; and the total lot coverage is conforming at 30.6% pursuant to Section 240-69 A. of the Code of Falmouth. Through the proposed construction plans, the lot coverage by structures will be slightly decreased to 24.1%; and the nonconforming front yard setback will remain as existing at 21.8'. The Board's consensus was that the existing pool house does not meet the criteria of a dwelling as it has two small rooms that are approximately 10' x 6.5' and a toilet on the south side of the pool house and a separate kitchen area on the north side of the structure. The affidavits submitted to the file also stated it was a 'pool house' with seasonal use.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed razing of the nonconforming single-family dwelling and the pool house will not be substantially more detrimental than what currently exists. The Board further finds that there is a slight improvement to the nonconforming lot coverage by structures. Furthermore, the Board finds that the construction of a new dwelling and a new pool house will bring the structures up to code and will also be an enhancement to the neighborhood.

Section 240-3 A. of the Code of Falmouth requires that a preponderance of credible evidence be submitted that substantiates to the Board of Appeals that more than one dwelling existed on a lot prior to May 19, 1959 and has been used consistently as such without abandonment.

The Board of Appeals finds that the burden of proof that the existing 'pool house' was a dwelling had not been met. The Board finds that the existing pool house had been a seasonal use consisting of two small rooms – possibly changing rooms – with a bathroom and a separate kitchen and has been an accessory use to the existing pool. Furthermore, the Board finds that the existing pool house was used by family members only and never rented out, thereby identifying it as an accessory use to the primary single-family dwelling on subject property and relief under Section 240-3 A. is not applicable to this application.

The Board finds that testimony given by the applicant and the applicant's representative stated that there is no intention whatsoever to rent out the accessory structure; that it will be used by family and friends only. The Board further finds that the applicant stated that there will be no cooking facilities whatsoever in the proposed pool house discussed herein.

The Board finds that the pool house existing and proposed are an accessory structure to the primary use of the single-family dwelling on subject property. The Board finds through testimony of the applicant that the proposed pool house will be used by family members and friends and not be rented out separately from the main dwelling on subject property.

The Board finds that the septic system will be improved through an upgrade and the Board of Health e-mail to the Zoning Administrator on September 24, 2014 confirms it has the capacity for a seven bedroom system. The Board further finds that the Board of Health will sign off on the Building Permit attesting to the septic system's capacity.

In addition to the above findings, the Board finds that the proposed will be in harmony with the general purpose and intent of this chapter and does include consideration 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 razing of the existing structures on subject property and the construction of the new dwelling and accessory pool house structure. The proposed construction will slightly decrease the nonconforming lot coverage by structures and the nonconforming front yard setback will remain as existing with no further encroachment into the setback.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- C. There will be no impact on traffic flow and safety with the increase of three to five bedrooms in the dwelling on the property as there is no intent to rent the property; and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and approved as to design as a seven (7) bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system as there was no referral submitted by the Water Department.
- G. The proposed dwelling reconstruction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

Member Bielan made a motion to Grant the Special Permit with conditions. Member Foreman 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 5 – 0 to Grant the Special Permit to Loring S. Jr. and Nancy S. Flint (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze the existing nonconforming single-family dwelling and the existing pool house on subject property known as 162 Saconeset Road in West Falmouth, MA. This special permit is subject to the following conditions:

1. The razing of the single-family dwelling and the pool house, construction of a new dwelling and new pool house, all setbacks, height of structures, lot coverage and use of structures shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Existing Conditions" prepared for Loring S. Jr. & Nancy S. Flint for Lot 243, 162 Saconeset Road in Falmouth, MA – Sheet 1 of 1 drawn by Holmes & McGrath, Inc. dated August 6, 2014 with a Board date 'received' stamp of August 8, 2014;
- "Plan of Proposed Sewage Disposal System" prepared for Loring S. Jr. & Nancy S. Flint for Lot 243, 162 Saconeset Road in Falmouth, MA – Sheet 1 of 2 drawn by Holmes & McGrath, Inc. dated August 6, 2014 with a final revision date of 9/9/14 with a Board date 'received' stamp of September 19, 2014;
- "Construction Details of Proposed Sewage Disposal System" prepared for Loring S. Jr. and Nancy S. Flint for Lot 243, 162 Saconeset Road in Falmouth, MA – Sheet 2 of 2 drawn by Holmes & McGrath, Inc. dated August 6, 2014 with a Board date 'received' stamp of September 19, 2014;
- "Renovation & Addition for the Flint Residence" – Existing Conditions of dwelling - architectural drawings by William F. Lee, II, AIA, consisting of Sheets 1 through 4 dated 11/14/11 with a Board date 'received' stamp of August 8, 2014;
- "Existing Conditions for Loring and Nancy Flint" – Sheet 1 drawing of existing pool house drawn by William F. Lee, II, AIA – Sheet 1 dated 1/21/14 with a Board date 'received' stamp of August 8, 2014;
- "Renovation & Addition for the Flint Residence" Architectural drawings for proposed dwelling drawn by William F. Lee, II, AIA consisting of Sheets 1 through 4 Sheets 1, 3 and 4 dated 5/2/2014 and Sheet 2 dated 6/4/2014 and with a Board date 'received' stamp of August 8, 2014; and
- "Renovation & Addition for the Flint Pool House" Architectural drawings drawn by William F. Lee, II, AIA – Sheets 1 through 7 dated 5/22/14 – Sheet 1 having a Board date 'received' stamp of September 19, 2014 and Sheets 2 through 7 having a Board date 'received' stamp of August 8, 2014.

NOTE: The applicant will be revising the floor plans of the pool house – see condition below.

2. There shall be no more than seven (7) bedrooms on subject property.
3. The applicant shall submit revised pool house floor plans showing the elimination of cooking facilities within said structure. The revised plans shall be submitted to the Board of Appeals for approval prior to the issuance of a building permit.
4. The proposed pool house shall not have any cooking facilities, which includes, but is not limited to a stove, oven, microwave oven, hot plate, toaster oven or a nu-wave cook plate.
5. The pool house approved herein shall not be rented out separately from the main dwelling on subject property.
6. The applicant shall submit a draft restrictive covenant for approval by the Board of Appeals that states specifically there will be no cooking facilities within the accessory pool house structure, that the structure shall not be rented separately from the principal dwelling structure and that the accessory pool house structure is accessory to the principal dwelling structure and not a dwelling. Once the draft restrictive covenant is approved by the Board and Town Counsel, it will be signed by the Town Manager and the applicant shall then file it with the Barnstable Registry of Deeds and submit a copy of said filing with the Board of Appeals forthwith.
7. There shall be no other accessory structures located on subject property outside of what is shown on the "Plan of Proposed Sewage Disposal System" noted in condition one above.
8. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
9. The Applicant shall meet the requirements of the DPW Water Division.
10. 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.) 11. This permit shall lapse two 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 Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 68-14

Applicant: LORING S. FLINT, JR. and NANCY S. FLINT  
of McLean, VA

Subject Property: 162 Saconesset Road, West Falmouth, MA  
Map 36, Section 03, Parcel 019, Lot 243

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

Vote: 5 - 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

\_\_\_\_\_  
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:**

SP #68-14 Flint - 162 Saconesset Rd / R&R dwelling and pool house posted 10/8/14