

Zoning Board of Appeals Decisions Decisions for: 03-27-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 19-14

APPLICANT: LAWRENCE K. SWIFT of Billerica, MA

OWNER(S): Lawrence K. Swift and Liping Gu Swift (174 Seapit Rd.)
Robert Allen Petersen and Veronica Stinnes Petersen (Lot 145 Seapit)

DEED/CERTIFICATE: Certificate 198844 – LC Plan 11210-C Sheet 3 (174 Seapit Rd)
Certificate 109784 – LC Plan 11210-C Sheet 3 (Lot 145 Seapit)

SUBJECT PROPERTY: 174 Seapit Road and 0 (Lot 145) Seapit Road, Waquoit, MA
Map 32, Section 20 Parcel 002A, Lot 144 (174 Seapit Rd)
Map 32, Section 20, Parcel 002, Lot 145 (0 Seapit Rd)

Under a date of February 13, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raze a pre-existing nonconforming single-family dwelling and construct a new dwelling on merged lots known as 174 Seapit Road and 0 Seapit Road, Waquoit, Massachusetts.

A public hearing was held on March 27, 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, Acting Clerk Matthew McNamara, Member Patricia Johnson and Associate Kimberly Bielan

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

Attorney Geoffrey Nickerson with Oppenheim and Nickerson, LLP and Jeff Ryther, P.E. with BSS Design, Inc. were present on behalf of the applicant. Attorney Nickerson explained that the applicant [owner of 174 Seapit Road] has signed a Purchase and Sale Agreement to purchase abutting lot [145] and merge the two properties through an ANR plan and raze the existing dwelling on 174 Seapit Road and construct a new dwelling on the new (merged) lot. Attorney Nickerson explained that this application has gone before the Conservation Commission, who had positive comments, but have not yet voted on the project.

Attorney Nickerson asked that the Board amend the application to include filing for relief under Section 240-23 G. (1) of the Code of Falmouth as the proposed plans show a three-car garage.

Jeff Ryther, P.E. reviewed the existing site conditions. The existing dwelling at 174 Seapit Road is nonconforming due to a 20' setback to the 3' contour line of the waters of Seapit River (Tidal) that requires a 50' setback; an 8.9' side yard setback that requires a 10' setback; and a 15' setback from the detached garage structure to the front property line off Seapit Road which requires a 50' setback with approval via Special Permit to be in a front yard. The garage may have existed prior to the 50' setback requirement. The nonconforming front and side yard setbacks will be eliminated through the new construction and the nonconforming setback to the waters of Seapit River will be improved with a 48' setback to the 3' contour line. Mr. Ryther explained that he tried to shift the proposed dwelling closer to Seapit Road but that it came too close to the septic and out of their comfort zone with the front yard setback.

Clerk McNamara read the Town Department referrals into the record.

A referral submitted from the Conservation Commission Agent Mark Kasprzyk stated: Notice of Intent filed through Conservation Commission. First hearing scheduled for 2/26/14.

A Referral submitted from the Engineering Department noted that the proposed driveway on the newly

created lot will require a permit being filed with the Engineering Division and that what is shown on the plans reviewed is acceptable.

Referrals submitted from the Building Department, Board of Health, Fire Department, Planning Department and Water Department had no comments or concerns.

Clerk McNamara noted that there was no correspondence submitted to the file from any abutter or interested parties.

Board Questions:

Member Bielan asked how the lots will be merged.

Attorney Nickerson stated they will be merged through an ANR (Approval Not Required) plan filed with the Planning Board.

Member Bielan asked if the two piers/docks will be retained for personal use only.

Attorney Nickerson stated yes.

Member Foreman asked how many bedrooms are in existing dwelling, how many in proposed dwelling and if new septic system is proposed.

Mr. Ryther referred to Drawing AB2 (existing floor plans) that show three bedrooms [and a bunk room in the basement] – Drawing A3 and A4 show proposed plan with two bedrooms and unfinished space above the garage to be finished in the future as a bedroom. Mr. Ryther stated there will be a new septic system that will be located more than 100' from the waters of the bay.

Member Cool asked if there are plans to finish the basement.

Mr. Ryther stated it is a walk-out towards the water and that the applicant would like to put a home gym and a shop in the space but do not want to finish it off immediately due to financial reasons.

Member Cool asked if there were any plans to add any accessory structures on the lot.

Mr. Ryther stated no.

Member McNamara asked if there will be any change to the grade or elevation of land.

Mr. Ryther stated they will be matching the 18' front grade elevation.

Chairman Haddad asked if they considered moving the tank and locating the structure 2' forward so as to be compliant with the setback to the 3' contour line.

Mr. Ryther stated they did not want to push it right up against the 25' setback and they do not like to jam everything up against the minimum setback in case mistakes are made during construction. He further noted that a nonconforming side yard setback was eliminated and the setback to the 3' contour line has been improved – relief required is 2'.

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

Member McNamara made a motion to close the hearing. Member Foreman 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 174 Seapit Road in Waquoit contains approximately 12,600 square feet of land and 0 Seapit Road (Lot 145) in Waquoit contains approximately 9,200 square feet of land – totaling 21,800 square feet of Residential C zoned land that is located in the Head of Waquoit Bay Coastal Pond Overlay District. The applicant applied under [as amended at hearing] Section(s) 240-3 and Section 240-23 G. (1) of the Code of Falmouth to raze the pre-existing nonconforming single-family dwelling and detached garage structure at 174 Seapit Road and construct a new dwelling with attached garage on a newly formed lot [merging of Lot 145 with 174 Seapit Road through an ANR plan]. The applicant will merge the two lots through an Approval Not Required Plan application to the Planning Board for approval and then file with the Registry of Deeds in Barnstable. The proposed dwelling with attached garage will have three bedrooms – two finished and one to be finished in the future in the space of the garage space. It is noted that a septic system plan was not submitted with the application but testimony of the applicant's representative stated that the existing dwelling has three bedrooms and the proposed dwelling will have only three bedrooms; and that the septic system will be for a three bedroom dwelling. There was no comment on the Board of Health referral substantiating bedroom count.

The applicant's representative asked, and the Board voted affirmatively, to amend the application for relief under Section 240-23 G. (1) as the plans show a three bay attached garage structure. The applicant's representative stated the applicant would like to store a boat in the third bay.

Section 240-3 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 existing dwelling at 174 Seapit Road, and the construction of a new dwelling on a newly formed lot through an ANR plan approved by the Planning Board, will not be substantially more detrimental than what currently exists. The Board further finds that the proposed dwelling will be in compliance with setbacks pursuant to Section 240-68 A. [front yard setback] and 240-68 B. [side yard setback] of the Code of Falmouth; and will have an improved setback of 48' to the 3' contour line of the waters of Seapit River that requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. Furthermore the Board finds that the merging of the two lots, creating a larger – more conforming lot - helps to lower the density in the neighborhood as only one dwelling will be constructed as opposed to the possibility of two dwellings being constructed.

The Board finds that the proposed plans for the three-bedroom dwelling is in compliance with lot coverage requirements pursuant to Section 240-69 A. of the Code of Falmouth.

Section 240-23 of the Code of Falmouth – "Special permit uses.", sub-section G. (1) requires a special permit for garage space for more than two cars if the lot is 30,000 square feet or less or if the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure – whichever is less.

The Board finds that the proposed subject property (merging of the two lots) is less than 30,000 square feet of land, that the space being created is for more than two cars and that the size of the garage space, although no calculation given, may be approximately 50% of the footprint of the dwelling. The Board further finds that the applicant's intended use of the attached garage space is for cars and boat storage – no habitable space on the ground level.

The Board finds that the proposed dwelling will be a three bedroom dwelling with two of the bedrooms finished and the third bedroom to be located on the second level of the dwelling over the garage will be finished at a future date. The Board further finds that there will be no bedrooms or sleeping areas created within the basement area proposed in dwelling; the space in the basement area, according to testimony by applicant's representative, shall be for a gym and work shop.

The Board finds through testimony of the applicant's representative and by the referral submitted to the file by the Conservation Commission Agent that the application was filed with Conservation Commission and is awaiting an affirmative vote and written decision.

In addition to the above findings, the Board finds that the proposed new three-bedroom dwelling 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 three-bedroom single-family dwelling with attached three-car garage as the new lot will be larger and two nonconforming setbacks [front yard and side yard] will be eliminated and lot coverage will be in compliance with the bylaw.
- B. The site is suitable for the proposed use as the property is zoned residential and will be used as such.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property. There will be a change in the location of the existing driveway on the newly created lot that will be permitted through the Engineering Department
- 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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. A three-bedroom Title V septic system will be installed according to testimony by the applicant's representative and will be reviewed by the Board of Health prior to building permit being issued. The referral from the Board of Health had no comment.
- 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 if a new water service is being put in or changed in location on site.
- 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 Foreman made a motion to Grant the Special Permit with conditions. Member McNamara 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 Lawrence K. Swift (herein referred to as Applicant) under Section(s) 240-3 and 240-23 G. (1) of the Code of Falmouth to raze the existing three-bedroom dwelling at 174 Seapit Road and to construct a three-bedroom single-family dwelling with attached garage on a newly created lot through an ANR plan currently known as 174 Seapit and 0 Seapit (Lot 145) in Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The razing of existing dwelling and detached garage structure, construction of the proposed three-bedroom dwelling with attached 3-car garage, all setbacks, height of structure, lot coverage, merging of the two lots and use of the dwelling structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – House Reconstruction" prepared for Lawrence Swift Lots 144 and 145 (#174) Seapit Road East Falmouth, Massachusetts, Drawing Number B21-85 drawn by BSS Design, Inc. dated February 7, 2014 with a final revised date of March 12, 2014 with a Board date 'received' stamp of March 20, 2014;
- "Renovations to: Swift Residence Seapit Road East Falmouth, MA" plans drawn by Giampietro Architects consisting of: Sheet No. AB1 'As-Built Elevations' dated 2/12/14 and AB2 'As-Built Floor Plans' dated 2/12/14 – both with a Board date 'received' stamp of February 13, 2014; and
- "Renovations to: Swift Residence Seapit Road Falmouth, MA" architectural plans drawn by Giampietro Architects consisting of Sheet No. A1 'Front Elevation' dated 3/19/14; Sheet No. A3 'First Floor Plan' dated 3/19/14; Sheet No. A4 'Second Floor Plan' dated 3/19/14; and Sheet A7 'Foundation Plan' dated 3/19/14 – all plans have a Board date 'received' stamp of March 20, 2014.

2. There shall be no more than three (3) bedrooms allowed on subject property.

3. There shall be no bedroom(s) or sleeping accommodations created within the basement area of the new dwelling approved herein.

4. There shall be only one (1) bedroom created in the space on the second level above the garage area as represented herein. The space appears to be a substantial sized area with one door off hallway as access (see plans noted in Condition 1 above).

5. A copy of the merged lots on a plan filed with the Barnstable Registry of Deeds shall be filed with the Board of Appeals prior to the issuance of a Building Permit.

6. 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.

7. The Applicant shall meet the requirements of the DPW Water Division.

8. 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.)

9. 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: 19-14

Applicant: LAWRENCE K. SWIFT of Billerica, MA

Subject Property: 174 and 0 Seapit Road, Waquoit, Massachusetts
Map 32, Section 20, Parcel 002A, Lot 144 (174 Seapit)
Map 32, Section 20, Parcel 002, Lot 145 (0 Seapit)

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 #19-14 Swift / 174 and 0 Seapit Rd. / merge lots and R&R sfd posted to web 4/9/14 mm