

Zoning Board of Appeals Decisions Decisions for: 08-13-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION – SPECIAL PERMIT

SPECIAL PERMIT NO: 57-15

APPLICANT(S)/OWNER: DANIEL R. GORIN & LISA F. GORIN of Centerville, MA

DEED/CERTIFICATE: Certificate 205267 & 205628 – LC Plan 11210-T, Lot 159 & Lot 160

SUBJECT PROPERTY: Lot 160, Seapit Road, Waquoit, MA
Assessor's Map: Map 32, Section 19, Parcel 001A, Lot 160
AND
194 Seapit Road, Waquoit, MA
Map 32, Section 19, Parcel 001A, Lot 159

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of June 19, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-68 D. of the Code of Falmouth to rebuild the pre-existing nonconforming structure on the same foundation along with new additions and deck on subject property known as Lot 160 and 194 Seapit Road, Waquoit, Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on August 13, 2015.
4. The public hearing was terminated on August 13, 2015 wherein the Board consisting of Vice Chair Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Jeffrey Ryther, P.E. with BSS Design, Inc. and Adam Mooring the Architect of the project, who reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

Letters/E-mails/Information from Applicant/Representative(s)

6/26/15 Copy of letter dated June 23, 2015 from Chapin Associates, Structural Engineers to AAM Architecture Design (project architect) regarding structural integrity of existing dwelling foundation – forwarded to ZBA staff via e-mail from Tom Bunker of BSS Design, Inc.

7/6/2015 E-mail from Thomas J. Bunker of BSS Design, Inc. responding to question (via e-mail) from

ZBA staff regarding merging of the two subject properties

Letters/Referrals/E-mails from Town Departments

6/23/2015 Letter to Mr. Gorin and a Copy of Order of Conditions for bulkhead reconstruction dated issued 6/16/2015 from Conservation Commission and submitted to file by ZBA staff

6/24/2015 A referral was submitted to the file by the Planning Department with no comment

6/29/2015 A referral was submitted to the file by the Building Commissioner with no comment

7/24/2015 A referral was submitted to the file by the Engineering Department with standard comments regarding public right of ways, public utilities and stormwater runoff

7/24/2015 A referral was submitted to the file by the Board of Health Agent David Carignan that states: This is an existing 4 bedroom dwelling. The plans in the file show a three bedroom dwelling with a future room which could be a possible bedroom – no conflict. Attached to referral was one page of the Title V Inspection Form "D. System Information" showing septic component information

7/29/2015 A copy of Order of Conditions dated 7/22/2015 for rebuilding of existing dwelling on subject properties known as Lot 159 and Lot 160 – was submitted to the file by ZBA staff

Plans submitted by Applicant/Applicant's Representative

6/19/2015 "Plan of Proposed Modification at 194 Seapit Road East Falmouth, Massachusetts" prepared for Daniel and Lisa Gorin as drawn by BSS Design Engineering & Surveying on a plan dated May 19, 2015 with a final revision date of June 19, 2015 and with a Board date 'received' stamp of June 19, 2015; and

"Gorin Residence 194 Seapit Road, Falmouth, MA" architectural plans as drawn by AAM Architecture & Design consisting of Drawing A-01 'Proposed Front & Left Elevations' dated 6/15/2015, Drawing A-02 'Rear Elevation' dated 6/15/2015, Drawing A-03 'Proposed Right Elevation' dated 6/15/2015, Drawing A-01 'Proposed Footprint' dated 4/17/2015, Drawing A-01 'Proposed First Floor Plan' dated 5/22/2015, Drawing A-02 'Proposed Second Floor Plan' dated 5/22/2015, Drawing A-03 'Proposed Basement Floor Plan' dated 5/22/2015, Drawing A 'Existing First Floor Plan' not dated, Drawing A 'Existing Second Floor Plan' not dated, Drawing A 'Existing Front and Left Elevations' not dated, Drawing A-02 'Existing Right and Rear Elevations' not dated and Drawing A-01 'Existing Foundation Basement Plan' not dated – all with a Board date 'received' stamp of June 19, 2015

Hearing:

Jeff Ryther with BSS Design, Inc. and Adam Mooring, Architect were present on behalf of the applicant and reviewed the existing site conditions and the proposed rebuilding of existing dwelling structure with additions. The subject property is in the AE13 flood zone; the existing dwelling 3,538 square feet of living space and has 9.3% lot coverage by structures. The proposed dwelling will have 4,188 square feet of living space and will be at 11.19% of lot coverage by structures. The space above the garage will be unfinished and used for storage; the lower level will be finished and include living space (included in the 4,188 sf). The dwelling is currently on 194 Seapit Road and will be merged with abutting lot 160 off Seapit Road and Rivers View Road. The existing nonconformity is the 29' setback from the structure to the 3' contour line off the Waters of Seapit River – this setback will remain the same through this proposed project. The file does contain 'Order of Conditions' signed by the Conservation Commission.

The Board discussed plans with Mr. Ryther and Mr. Mooring. Board discussed driveway, elevation, height of proposed building and the dwelling remaining a four bedroom dwelling, which Mr. Gorin, applicant/owner who was present, confirmed that the dwelling will remain a four bedroom dwelling. All Board concerns and questions were addressed. The plan to merge the two lots (Lot 159 and 160) were not submitted to the file, however testimony was given that the lots had been merged. It is noted that the Town records do not indicate the merging of the two lots.

Vice Chairman Foreman asked for any public comment in support or opposition of the proposed additions.

There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 5 - 0.

Vice Chairman Foreman 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 194 Seapit Road and Lot 160 Seapit Road in Waquoit contains in total 32,200 square feet of Residential C zoned land that is located partially within the Childs River Coastal Pond Overlay and the Head of Waquoit Bay Coastal Pond Overlay. The applicant applied under Section(s) 240-3 and 240-68 D. of the Code of Falmouth to reconstruct the existing single-family dwelling on same foundation addition and deck on subject property. The adjacent lot known as Lot 160 is owned by the applicant and testimony was given that an ANR has been prepared showing the merging of subject properties (194 Seapit and Lot 160 Seapit). The existing nonconformity is the 29' setback of the existing structure and foundation to the 3' contour line off the waters of Seapit River which requires a 50' setback pursuant to Section 240-68 D. of the Code of Falmouth. The "Plan of Proposed Modifications at 194 Seapit Road East Falmouth, Massachusetts" does not show total lot coverage percentage [structures, parking and paving]. According to the plan submitted, it appears that the total lot coverage under Section 240-69 A. does not exceed 40% as the driveway is gravel and not counted as impervious area.

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 rebuilding of the dwelling on existing foundation with some additions as shown is not substantially more detrimental than what is existing. The Board further finds that there is no increase in the nonconforming setback to the 3' contour line off the waters of Seapit River and there are no new nonconformities being created. Furthermore, the Board finds that the rebuilding of the dwelling on existing foundation will comply with Flood Zone Regulations.

Section 240-68 D. of the Code of Falmouth requires that no structure can be built within 50' of the 3' contour line off tidal bodies of waters as listed.

The Board finds that the existing dwelling structure was constructed in 1970 (approximately), prior to the bylaw requirement for a 50' setback to the 3' contour line off the waters of Seapit River. The Board further finds that the existing foundation will remain and the house will be rebuilt on same foundation, thus the 29' nonconforming setback to the 3' contour line will remain the same.

The Board finds that the proposed re-built dwelling will have a height of 28'7" which is below the 35' maximum height allowed pursuant to Section 240-70 of the Code of Falmouth. The Board further finds that the subject property will be serviced by two driveways – one off Seapit Road (Lot 159) and a second off Rivers View Road (Lot 160) that currently exists.

The Board finds that there was testimony that the two lots – Lot 159 and Lot 160 were merged – there was no evidence of said merging submitted to this file and Town records do not indicate a merging of said lots took place. The lot coverage for the existing and proposed dwelling was based on the total square footage of Lot 159 and Lot 160 as merged. In the event the lots are not merged, lot coverage on Lot 159 which is approximately 16,500 square feet in size, may be nonconforming; and the structure to the northerly side yard property may not meet the required 10' setback.

The Board finds that two 'Orders of Conditions' were submitted to the file for proposed projects on subject property. One project being the bulkhead at the rear of the property off Seapit River; and the second project is the rebuilding of the single-family dwelling herein discussed.

The Board finds through testimony by the applicant's architect that the proposed space above the garage area will be unfinished and for storage only. The Board further finds through testimony by the applicant's

architect that the lower level (basement) will be finished and have habitable space that is included with the proposed square footage of living space noted earlier in hearing. Furthermore, the Board finds through testimony by the applicant that there are four bedrooms in existing dwelling and the proposed dwelling will be limited to four bedrooms as well.

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 rebuilding of the single-family dwelling as the nonconforming setback to the 3' contour line will not be increased and there will be no other nonconforming setbacks and lot coverage by structures will be in compliance with Section 240-69 A; total lot coverage on subject property will be verified through a revised plot plan as conditioned below.
- B. The site is suitable for the proposed single-family dwelling use as the property is zoned residential and will remain as a single-family dwelling use.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on Lot 159. There is an existing driveway currently used by residents off Lot 160. The driveway on each lot will remain as existing according to testimony by the applicant's representatives.
- 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. The sewage disposal system is in place and signed off as a four bedroom system by the Board of Health – see referral from the Board of Health submitted to the file.
- 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 the Water Department did not submit a referral regarding this project.
- 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Murphy seconded the motion. Motion carried 5 – 0.

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 Daniel R. and Lisa F. Gorin (herein referred to as Applicant) under Section(s) 240-3 and 240-68 D. of the Code of Falmouth to rebuild the pre-existing nonconforming single-family dwelling structure on the same foundation, with additions and a deck, on subject property known as 194 Seapit Road and Lot 160 Seapit Road, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The re-building of the existing single-family dwelling with additions, all setbacks, height of structure, lot coverage and use of dwelling as stated shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Proposed Modification at 194 Seapit Road East Falmouth, Massachusetts" prepared for Daniel and Lisa Gorin as drawn by BSS Design Engineering & Surveying on a plan dated May 19, 2015 with a final revision date of June 19, 2015 and with a Board date 'received' stamp of June 19, 2015; and

- "Gorin Residence 194 Seapit Road, Falmouth, MA" architectural plans as drawn by AAM Architecture & Design consisting of Drawing A-01 'Proposed Front & Left Elevations' dated 6/15/2015, Drawing A-02 'Rear Elevation' dated 6/15/2015, Drawing A-03 'Proposed Right Elevation' dated 6/15/2015, Drawing A-01 'Proposed Footprint' dated 4/17/2015, Drawing A-01 'Proposed First Floor Plan' dated 5/22/2015, Drawing A-02 'Proposed Second Floor Plan' dated 5/22/2015, Drawing A-03 'Proposed Basement Floor Plan' dated

5/22/2015, Drawing A 'Existing First Floor Plan' not dated, Drawing A 'Existing Second Floor Plan' not dated, Drawing A 'Existing Front and Left Elevations' not dated, Drawing A-02 'Existing Right and Rear Elevations' not dated and Drawing A-01 'Existing Foundation Basement Plan' not dated – all with a Board date 'received' stamp of June 19, 2015

- 2. There shall be no more than four (4) bedrooms allowed on subject property.
- 3. Approval of this Special Permit is contingent upon the applicant submitting a copy of the plan showing Lot 159 and Lot 160 were merged and that said plan was filed with the Registry of Deeds or Land Court. The applicant shall submit this proof to the Board of Appeals prior to issuance of a building permit.
- 4. The area above the garage space shown on Drawing A-02 of the architectural plans noted in Condition 1 above, shall be non-habitable space and used for storage only as stated at the hearing.
- 5. The applicant shall submit a revised "Plan of Proposed Modification at 194 Seapit Road East Falmouth, Massachusetts" showing the total lot coverage by structures, parking and paving on subject property. The revised plan shall be submitted to 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: 57-15

Applicant: DANIEL R. GORIN & LISA F. GORIN OF Centerville, MA

Subject Property: 194 Seapit Road and Lot 160 Seapit Road, Waquoit, MA
Map 32, Section 19, Parcel 001A, Lot 159 and Lot 160

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.

Terrence J. Hurrie, Clerk, Board of Appeals

_____ 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 57-15 Gorin / Filed w/Town Clerk 8/20/15