

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

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 59-15

APPLICANT(S)/OWNER: 137 SILVER BEACH AVE DEVELOPMENT, LLC of Falmouth, MA - PETER LIND, TRUSTEE

DEED/CERTIFICATE: Book 28058 / Page 69

SUBJECT PROPERTY: 137 Silver Beach Ave., North Falmouth, MA  
Assessor's Map: Map 04A, Section 31, Parcel 000, Lot 659

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of July 2, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 of the Code of Falmouth to raze the existing single-family dwelling and construct a new single-family dwelling, increasing lot coverage by structures on subject property known as 137 Silver Beach Avenue, North Falmouth, 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 Chairman 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 present and authorized Dennis Murphy to represent him at the hearing. Mr. Murphy 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

8/3/2015 Letter in support of the proposed project submitted by Dan and Kathleen Kanaley of 124 Silver Beach Avenue, North Falmouth

8/4/2015 E-mail sent to ZBA by Sueanne Bouchie of 136 Silver Beach Avenue, North Falmouth stating support of the proposed project

8/5/2015 E-mail sent to ZBA by Edward Shea of 166 Crystal Spring Avenue, North Falmouth stating support of the proposed project; letter attached to e-mail and signed by Mr. Shea

8/5/2015 E-mail sent to ZBA by R.W. Lucas of 138 Silver Beach Avenue, North Falmouth in support of the proposed project

8/7/2015 Letter in support of the proposed project submitted by Scott Alessi of 8 Andrea Road, North Falmouth

8/12/2015 E-mail sent to ZBA by David O'Keefe of 169 Crystal Spring Road, North Falmouth stating

support of the proposed project

8/13/2015 Letter in support of the proposed project submitted by James and Katherine Murphy of 130 Silver Beach Avenue, North Falmouth

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

7/2/2015 Application, plans, letter of authorization and fee submitted to the ZBA office by BSS Design, Inc.

7/22/2015 E-mail from BSS Design, Inc. clarifying that the height of the existing dwelling is 22'

8/6/2015 Letter from Dennis Murphy to the ZBA with information on the request for raze and reconstruct as proposed

8/6/2015 Letter of July 22, 2015 from Thomas J. Bunker, PLS with BSS Design with attachment of calculations on lot coverage and bulk percentages within the general neighborhood of subject property – submitted by Dennis Murphy (attached to letter noted above)

Letters/Referrals/E-mails from Town Departments

7/10/2015 Referral submitted by the Planning Department with no comment

7/30/2015 Referral submitted by Building Commissioner with no comment

7/24/2015 Referral submitted by the Board of Health Agent David Carignan with the comment that the property is on Town sewer

7/28/2015 A copy of a previous ZBA Decision from 1992 (special permit #14-92) for subject property was submitted to the file by ZBA staff

8/3/2015 E-mail to ZBA from Jerry Potamis, Wastewater Superintendent, noting that the New Silver Beach Wastewater Bylaw allows up to 3 bedrooms (unless more bedrooms existing prior to Town sewer); any increase beyond the 3 bedrooms may be granted in a Variance through the Board of Selectmen

Plans submitted by Applicant/Applicant's Representative

7/2/2015 "Lind Residence 137 Silver Beach Ave. North Falmouth, MA" – Custom two story home with two car garage - Drawing 1 of 9 drawn by JB Designs showing proposed elevations – dated 6/15/2015 and with a Board date 'received' stamp of July 2, 2015

7/6/2015 "Sketch Addendum" - three pages – using Assessors' cards showing existing basement, first and second floor plans with a Board date 'received' stamp of July 6, 2015

7/22/2015 "Plot Plan – Proposed House" prepared for peter Lind 137 Silver Beach Avenue North Falmouth, Massachusetts drawn by BSS Design, Inc. dated July 2, 2015 with a final revision date of July 14, 2015 and with a Board date 'received' stamp of July 22, 2015

8/6/2015 "Lind Residence 137 Silver Beach Ave. North Falmouth, MA" – Custom two story home with two car garage – Drawing 2 of 9 drawn by JB Designs showing proposed Lower Level, First Floor and Second Floor plans – dated 6/15/2015 and with a Board date 'received' stamp of August 6, 2015

Hearing:

Applicant/owner Peter Lind spoke briefly and introduced Dennis Murphy, who on behalf of Mr. Lind reviewed the existing site conditions and the proposed raze and reconstruction of the single-family dwelling on subject property.

The Board discussed plans with Mr. Murphy and Mr. Lind. All concerns and questions were discussed. The

majority of the Board had concerns with the lot coverage by structures being increased from 12.31% to 22.96%; and the bulk of the proposed dwelling, which is almost twice the size of the existing dwelling. The Board discussed with the applicant the possibility of moving the house further back on the lot (the house itself sits 10' further back from the front property line off Silver Beach Ave. than the existing – proposed stairs are 10.1' from front property line.)

The Board discussed the first floor plan regarding the doorways/openings off the hallway for the proposed two rooms noted on Drawing 2 of 9 as 'Den' and 'Office'. The applicant was amenable to removing a portion of the wall off the foyer.

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

James Murphy of 130 Silver Beach Avenue spoke in support of the proposed project and welcome year round families such as Mr. Lind's to the neighborhood.

Member Cool made a motion to close the hearing. Member Van Keuren 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 137 Silver Beach Avenue in North Falmouth contains 10,070 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 and Section 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The subject property is located such that it has two front yard: one off Crystal Spring Avenue and the other off Silver Beach Avenue. The applicant applied under Section 240-3 of the Code of Falmouth as the setback from the structure to the front property line off Silver Beach Avenue was nonconforming with a 6.1' setback that requires a 25' setback under Section 240-68 A. of the Code of Falmouth. There is also a nonconforming setback from the easterly side of the existing dwelling to the side yard property line of 9.4', which requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The proposed plans show that the dwelling will be reconstructed to where the main structure will be 19.1' from the property line off Silver Beach Avenue – the stairs down from main level will be 10.1' from the same property line. It was stated at the hearing by Mr. Murphy that Eladio Gore, Building Commissioner, designated that Crystal Spring Avenue shall be the front yard of subject property [see letter in filed from BSS Design, Inc. of July 22, 2015]. Therefore the back yard will be the property line off Silver Beach Avenue and shall now comply with setback regulations is Section 240-68 B. of the Code of Falmouth. The proposed dwelling will be a three-bedroom dwelling with a ground level garage and a first and second floor. The proposed dwelling will comply with FEMA regulations. The elevation of the first floor will be at 16' (property is at AE15); the height of the proposed dwelling will be 34.9' – slightly under the maximum height requirement of 35' pursuant to Section 240-70 of the Code of Falmouth. The proposed dwelling will also, according to the "Plot Plan – Proposed House", meet all setback requirements. The subject property and general area was recently put on Town sewer and this property is designated for three bedrooms.

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 nonconforming dwelling and its reconstruction in a new location on subject property and designation of a front yard by the Building Commissioner together will allow the new dwelling structure to be in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth. The Board further finds that the new dwelling plans show that the proposed will improve living space for the applicant and his family members. Furthermore, the Board finds that the proposed dwelling with additional height and size is not substantially more detrimental to the property and neighborhood than the existing dwelling.

The Board finds that the applicant is limited to the location of the proposed dwelling due to Conservation Commission restrictions and regulations for mitigation relative to the nearby wetland. The Board further finds that the applicant has been through a hearing process with the Conservation Commission who required mitigation plantings on subject property and a 'limit of work' area. The Conservation Commission hearing has been closed and the applicant is awaiting the written 'Order of Conditions'.

Section 240-69 – "Maximum lot coverage." of the Code of Falmouth – subsection E. allows property located in Residence B, C and Agricultural B zoning districts to increase lot coverage by structures up to 25% through a special permit provided the Board consider the size and height of the structure in relation to the average size and height of structures in the neighborhood, any effects of shadowing on abutting properties, any impact on a view or vista from the roadway or any effect of nitrogen on any coastal embayment.

The Board finds that the lot coverage by structures proposed on subject property will be increased from 12.31% to 22.96% which exceeds the 20% maximum allowed by right in this residential district. The Board further finds that the applicant applied for relief under Section 240-69 to exceed the 20% maximum by structures. Furthermore, the Board finds under Section 240-69 E. criteria that the proposed height and structure of the house is mostly due to the new FEMA regulations and that there are a few in the area that have been reconstructed to meet said regulations and there will be more in the future; that there does not appear to be any shadowing effect on abutting properties; that the proposed does not impact a view or vista from a public roadway; and the subject property is on Town sewer and therefore has no impact on nitrates in a coastal embayment.

The Board finds that the proposed new dwelling on subject property cannot exceed three bedrooms and that the plans submitted reflect three bedrooms. The Board further finds that through testimony by the applicant, he is amenable to removing the wall separating the 'Den' and 'Office' areas from the foyer into the living area, thus opening up the noted 2'8" opening and leaving both the 'Den' and 'Office' area with large cased openings.

The Board finds through testimony by the applicant's representative that there will be no accessory structures added to the subject property. Accessory structure is defined as a detached garage, shed, pool or any other structure incidental to the primary use of the dwelling approved herein.

The Board finds that the majority of the six (6) letters of support submitted to the file were from surrounding abutters to the property.

In addition to the above findings, the Board finds that the proposed dwelling reconstruction 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 new dwelling as all nonconforming setbacks have been eliminated; and the lot coverage by structures allowed to exceed the 20% maximum to 22.96% is allowed through this special permit and is in keeping with the lot coverage of properties in the neighborhood.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as, and will remain, a single-family dwelling.
- C. There will be no impact on traffic flow and safety as the Board finds that the increase of one bedroom on subject property is negligible and the driving will remain as existing.
- 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 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 subject property is on the Town sewer that allows three bedrooms for the subject property.
- 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 Board did not receive a referral from the Water Department regarding any update of water service.
- 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 4 – 1 with Member Cool in opposition.

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 – 1 to Grant the Special Permit to 137 Silver Beach Avenue Development, LLC – Peter Lind, Trustee (herein referred to as Applicant) under Section(s) 240-3 and 240-69 of the Code of Falmouth to raze the pre-existing nonconforming single-family dwelling and reconstruct a single-family dwelling on subject property known as 137 Silver Beach Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing dwelling, construction of the new dwelling, all setbacks, height of structure, lot coverage and use of the three-bedroom dwelling structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Lind Residence 137 Silver Beach Ave. North Falmouth, MA" – Custom two story home with two car garage - Drawing 1 of 9 drawn by JB Designs showing proposed elevations – dated 6/15/2015 and with a Board date 'received' stamp of July 2, 2015;

- "Sketch Addendum" - three pages – using Assessors' cards showing existing basement, first and second floor plans with a Board date 'received' stamp of July 6, 2015;

- "Plot Plan – Proposed House" prepared for peter Lind 137 Silver Beach Avenue North Falmouth, Massachusetts drawn by BSS Design, Inc. dated July 2, 2015 with a final revision date of July 14, 2015 and with a Board date 'received' stamp of July 22, 2015; and

- "Lind Residence 137 Silver Beach Ave. North Falmouth, MA" – Custom two story home with two car garage – Drawing 2 of 9 drawn by JB Designs showing proposed Lower Level, First Floor and Second Floor plans – dated 6/15/2015 and with a Board date 'received' stamp of August 6, 2015.

2. There shall be no more than three (3) bedrooms allowed on subject property without a modification request to- the Board of Appeals and after approval for a Variance to allow an additional bedroom is given by the Board of Selectmen.

3. The applicant shall submit revised first floor plans showing the removal of the wall off the foyer that will eliminate the 2'8" wide door for access to the 'Office' and 'Den' areas shown on Drawing 2 of 9 [architectural plans] noted in Condition 1 above. The revised first floor plan shall be submitted to the Board of Appeals for approval prior to the issuance of a building permit.

4. This Special Permit approval is contingent upon the final approval by the Conservation Commission through a written 'Order of Conditions'. The applicant shall submit to the Board of Appeals, a copy of the signed 'Order of Conditions' prior to issuance of a building permit.

5. There shall be no accessory structures allowed on subject property without further review and approval by the Board of Appeals.

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: 59-15

Applicant: 137 SILVER BEACH AVENUE DEVELOPMENT, LLC of Falmouth, MA – Peter Lind, Trustee

Subject Property: 137 Silver Beach Avenue, North Falmouth, MA  
Map 04A, Section 31, Parcel 000, Lot 659

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 – 1 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:**

59-15 SP / 137 Silver Beach Ave Dev.LLC - Peter Lind Tr. / Filed w/Town Clerk 8/19/15