

## Zoning Board of Appeals Decisions Decisions for: 06-02-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 042-16

APPLICANT/OWNER(S): CHILDS RIVER REALTY, LLC of Norton, MA

SUBJECT PROPERTY: 115 Childs River Road, Waquoit, Massachusetts  
Assessor's Map: Map 32, Section 19, Parcel 010, Lot 003F

DEED/CERTIFICATE: Certificate 203490 – Lot F-3, Plan 11210-L

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 30, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-68 A, B. & D. of the Code of Falmouth to demolish the pre-existing nonconforming single-family dwelling and reconstruct a new dwelling on subject property known as 115 Childs River Road, Waquoit, MA.
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 May 26, 2016.
4. The public hearing was terminated on June 2, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Mark Cool sitting as voting member, 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 Raul Lizardi-Rivera 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)

3/30/2016 E-mail from Raul Lizardi-Rivera regarding height of existing dwelling with attached photo.

4/1/2016 Raul Lizardi-Rivera submitted to the file photos of the existing dwelling (showing all sides of the dwelling).

5/23/2016 E-mail from Raul Lizardi-Rivera to Zoning Board Office regarding "Existing Conditions Plan" for subject property and timber walk/stairs not counted in lot coverage.

5/24/2016 E-mail from Raul Lizardi-Rivera to Zoning Board office responding to proposed use of basement.

5/27/2016 E-mail from Raul Lizardi-Rivera to Zoning Board office regarding removal of existing sheds from property and proposed stairs along norther edge of deck.

6/1/2016 Raul Lizardi-Rivera submitted Bulk Coverage and Lot Coverage calculations to the file per the Board's request.

#### Letters/Referrals/E-mails from Town Departments

3/30/2016 Referral submitted to the file from the Planning Department staff with no comment.

3/31/2016 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment.

4/22/2016 Referral submitted to the file from Conservation Commission Agent Kasprzyk that states: Advertised for 'Notice of Intent' hearing for 4/20/2016, hearing continued to 5/11/16.

4/29/2016 Referral submitted to the file by Building Commissioner Brandolini that states: Shall comply with all applicable Building Code provisions, including Flood Resistant Construction.

5/3/2016 Referral submitted to the file by the Engineering Department (S. Schluter staff engineer) that states: This application was reviewed only for impacts to public right of ways and public utilities. Childs River Road is a Private right of way in this area (please update the plans). 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. While this is a private road, we recommend setting the cobble apron at least a foot behind the edge of pavement to prevent plow damage, a 1 foot asphalt apron would be typical.

#### Plans submitted by Applicant/Applicant's Representative

"Plan of Existing Conditions" prepared for Mark Carroll for Lot F3, #115 Childs River Road in East Falmouth, MA - Sheet 1 of 1 dated October 15, 2015 - final revision date of 3/28/2016 drawn by Holmes and McGrath, Inc., signed by Joel R. Kubick, PLS on March 28, 2016 - and with a Board date 'received' stamp of March 30, 2016;

"Plan of Proposed House Modifications" prepared for Childs River Realty, LLC for Lot F3, #115 Childs River Road in East Falmouth, MA - Sheet 1 of 2 dated March 22, 2016 with a final revision date of 5/3/16 as drawn by Holmes and McGrath, Inc. - stamped and signed by Timothy M. Santos, PE with a Board date 'received' stamp of May 24, 2016;

"Construction Details of Proposed House Reconstruction" prepared for Childs River Realty, LLC. For Lot F3, #115 Childs River Road in East Falmouth, MA - Sheet 2 of 2 dated March 22, 2016 with a final revision date of 5/3/16 as drawn by Holmes and McGrath, Inc. with a Board date 'received' stamp of May 24, 2016;

"Existing Floor Plans" drawn by Dennis Colwell Architects, Inc. - Drawing EX1.0 dated 1/28/2016 with a Board date 'received' stamp of March 30, 2016;

"Floor Plans" drawn by Dennis Colwell Architects, Inc., - Drawing A1.0 dated 3/23/2016 and Drawing A1.1 dated 3/14/2016 - both with a Board date 'received' stamp of March 30, 2016;

"Second Floor Plan" drawn by Dennis Colwell Architects, Inc. - Drawing A1.2 dated 3/14/2016 - with a Board date 'received' stamp of March 30, 2016; and

"Elevations" drawn by Dennis Colwell Architects, Inc. - Drawing A2.0 dated 3/14/2016 and with a Board date 'received' stamp of March 30, 2016.

#### Hearing:

Raul Lizardi-Rivera reviewed the existing site conditions and the proposed razing and reconstruction of the four-bedroom, one and one-half story, single-family dwelling, noting that the side, front and rear of the property have nonconforming setbacks that will be slightly improved. The most improved will be the setback at the rear of dwelling that is 31' from the 3' contour line of the waters off Vineyard Sound that will improved to 33'. The front setback is nonconforming at 15.8' which will remain the same; and the side yard setback is 8.6', which will slightly be improved at 8.7'. He explained that the lot coverage by

structures is nonconforming at 33.3% and the total lot coverage is also nonconforming at 44.3%. The proposed two-story, four-bedroom single-family dwelling, as proposed, will maintain the same coverage as existing. Mr. Rivera explained that the first floor of the proposed dwelling will be at 18.6' (currently at 15.8') and there will be some fill and regarding at the front of the property to accommodate the raising of the first floor to meet FEMA requirements. The proposed dwelling height at the ridge will be 26.3'. The septic system on site is a four (4) bedroom capacity system; the leaching field will remain and the tank will be abandoned and replaced with a gravity system. The dwelling will remain a four (4) bedroom dwelling. He explained that Conservation Commission approved the project but has not issued the Order of Conditions as yet.

The Board discussed plans with Mr. Rivera and asked about the three sheds on the property and if any can be removed to decrease the nonconforming lot coverage and improve the 1.6' nonconforming setback of one shed and the .05' setback of another shed. The Board asked Mr. Rivera why there was no bulk and lot coverage calculations submitted. Mr. Rivera explained that the property is well over the lot coverage requirement and is considered pre-existing nonconforming. Board discussed.

Mr. Rivera asked for a continuation for the purpose of prepared bulk and lot coverage calculations.

Member Van Keuren made a motion to continue the hearing to June 2, 2016 at 6:00 PM. Member Cool seconded the motion. Motion carried 4 - 0.

Hearing June 2, 2016:

Raul Lizardi-Rivera reviewed the bulk and lot coverage calculations he submitted to the file on June 1, 2016. He compared subject property to thirty (30) properties in the neighborhood. Mr. Rivera informed the Board that the applicant is amenable to removing all three (3) sheds on subject property and eliminate some replace some exterior steps with landscaping material. Through the proposed changes the lot coverage by structures will be decreased from 35.1% to 34%, and the total lot coverage will be reduced from 44.3% to 43%.

Board discussed changes to site conditions and plans, and discussed bulk and lot coverage calculations.

Chairman Foreman asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 4 - 0.

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 115 Childs River Road in Waquoit contains 8,600 square feet of Residential C zoned land that is located within the Childs River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. and 240-68 A., B and D. of the Code of Falmouth to demolish (raze) and reconstruct the pre-existing nonconforming single-family dwelling and reconstruct a new dwelling on subject property. The existing 1.5 story, four-bedroom dwelling has a nonconforming front yard setback of 15.8' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; the structure has a nonconforming setback to the northerly side yard property line of 8.6' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; and the lot coverage by structures and structures, parking and paving are nonconforming as both structures and structures, parking and paving percentages exceed what is allowed in Section 240-69 A. and E. of the Code of Falmouth. Also nonconforming is the setback of the dwelling structure to the 3' contour line off the waters of Vineyard Sound of 31' that requires a 50' setback under Section 240-68 D. of the Code of Falmouth. The proposed two-story, four-bedroom dwelling will be constructed in substantially the same footprint as existing. The height of the structure to ridge will be 26.3', the front yard setback will be unchanged, the side yard setback will be slightly improved from 8.6' to 8.7' and the nonconforming setback of 31' to the 3' contour line off the waters of Vineyard Sound will be improved to 33'. The dwelling will remain as a four (4) bedroom

dwelling and the basement area will be used as storage for mechanical utilities and personal storage.

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 demolition and reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds through submission of bulk and lot coverage calculations that the proposed will not adversely impact the character of the neighborhood. Furthermore, the Board finds that the applicant was amenable to eliminating the three (3) sheds on subject property eliminated two nonconforming setbacks and reduced the nonconforming lot coverage; and the proposed revising of the stairs from deck to become a landscape feature reduced the nonconforming lot coverage as well.

The Board finds that lot coverage by structures will be reduced from 35.1% to 34%, although still exceeding the 25% maximum allowed through Special Permit from this Board under Section 240-69 E. of the Code of Falmouth, it is an improvement to the site. The Board further finds the same with the total lot coverage which will be reduced from 44.3% to 43% - 40% maximum allowed under Section 240-69 A. of the Code of Falmouth.

The Board finds that the proposed height of the new dwelling will be 26.3' – overall height is 28' from grade; and the first floor of the dwelling, to meet FEMA standards, will be at 18.6' elevation. The Board further finds that there will be a change in the grade at the front of the dwelling to insure stormwater runoff remains on subject property.

The Board finds through testimony that Conservation Commission has closed the hearing on the application before them for subject property and applicant is awaiting a written decision. The Board further finds that the "Plan" was revised on May 3, 2016 to note changes made per the Conservation Commission.

Section 240-68 A., B. and D. of the Code of Falmouth sets forth requirement of setbacks from structure to property lines [240-68 A. and B.] and set back from structures to the 3' of any waters off Vineyard Sound.

The Board finds through plans submitted by a Certified Engineer and a Certified Land Surveyor that the existing dwelling has nonconforming setbacks to the front and side property lines of subject property, as well as a nonconforming setback to the 3' contour line off the waters Vineyard Sound. The Board further finds that the applicant is amenable to certain changes herein noted that will improve two of the nonconforming setbacks and the setback to the 3' contour line will also be improved. The applicant will be required in the conditions below to submit revised plans noting the changes approved herein.

The Board finds that the existing dwelling is a four-bedroom dwelling and the proposed dwelling will also be a four-bedroom dwelling. The Board further finds through testimony by the applicant's representative and that the existing septic tank will be pumped dry, filled and abandoned and a new septic tank installed on subject property. Furthermore, the Board finds that the plans show two proposed leaching fields – one on the north side of the dwelling and one on the south side of the dwelling – as a drain for roof runoff.

In addition to the above findings, the Board finds that the proposed demolition of existing dwelling and the construction of a new dwelling on subject property 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 reconstructed dwelling as there will be improvements to nonconforming setbacks and lot coverage on subject property.
- B. The site is suitable for the proposed use as the property is zoned residential and will continued to be used as a single-family residence through this special permit approval.
- 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 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 as a four-bedroom system with the existing septic tank being

filled and abandoned and a new tank being installed. The change in the septic components will require approval 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.

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.

The Board of Appeals has weighed the effects of the proposed reconstruction of the pre-existing nonconforming dwelling as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Cool made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Grant the Special Permit to Childs River Realty, LLC (herein referred to as Applicant) under Section(s) 240-3 C. and 240-68 A., B. and D. of the Code of Falmouth to demolish and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 115 Childs River Road in Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The demolition and reconstruction of the single-family dwelling 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 Mark Carroll for Lot F3, #115 Childs River Road in East Falmouth, MA – Sheet 1 of 1 dated October 15, 2015 – final revision date of 3/28/2016 drawn by Holmes and McGrath, Inc., signed by Joel R. Kubick, PLS on March 28, 2016 – and with a Board date 'received' stamp of March 30, 2016;

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- "Elevations" drawn by Dennis Colwell Architects, Inc. – Drawing A2.0 dated 3/14/2016 and with a Board date 'received' stamp of March 30, 2016.

2. The plan submitted - "Plan of Proposed House Modifications" prepared for Childs River Realty, LLC for Lot F3, #115 Childs River Road in East Falmouth, MA – Sheet 1 of 2 dated March 22, 2016 with a final revision date of 5/3/16 as drawn by Holmes and McGrath, Inc. – stamped and signed by Timothy M. Santos, PE with a Board date 'received' stamp of May 24, 2016 – shall be revised showing the removal of the three (3) sheds, the change in the steps from deck, accurate updated setbacks and lot coverage as discussed during hearing and noted in the above Findings. The plan will be administratively reviewed by the Zoning Administrator for approval. The revised plan shall be submitted to the Board of Appeals and

approved prior to issuance of a building permit.

3. The applicant shall remove and not replace the three (3) sheds on subject property as stated during the hearing process by the applicant’s representative. There shall not be any sheds located on subject property without review and approval by the Board of Appeals.

4. There shall be no more than four bedrooms allowed on subject property at any time.

5. There shall be no bedrooms or sleeping accommodations created within the basement space of the dwelling.

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: 042-16

Applicant: CHILDS RIVER REALTY, LLC of Norton, MA

Subject Property: 115 Childs River Road, Waquoit, Massachusetts  
Map 32, Section 19, Parcel 010, Lot 003F

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 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 042-16 / Childs River Realty, LLC. / Filed w/Town Clerk 6/15/16