

Zoning Board of Appeals Decisions Decisions for: 04-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 027-16

APPLICANT/OWNER(S): JERALDINE LAVENDER, TRUSTEE of Hatchville, MA

SUBJECT PROPERTY: 490 Hatchville Road, Hatchville, MA
Assessor's Map: Map 10, Section 01, Parcel 004, Lot 000

DEED/CERTIFICATE: Book 02787 / Page 0193

SUMMARY: Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of March 2, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. of the Code of Falmouth to have the town acknowledge that (2) separate dwelling units existed prior to May 19, 1959 and to allow the raze and reconstruction of the pre-existing, nonconforming second dwelling [cottage] on subject property known as 490 Hatchville Road, Hatchville, 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 April 28, 2016.
4. The public hearing was terminated on April 28, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman (Acting Chairman), Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis (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 Steve Cook with Cotuit Bay Design and 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)

4/11/2016 Applicant submitted a letter from Robert W. Gunning to Zoning Board of Appeals dated June 26, 2015 noting familiarity with subject property in the 1950's

4/11/2016 Applicant submitted a letter from Anita Gunning to Zoning Board of Appeals dated June 15, 2015 noting that cottage on subject property existed in the 1940's and used during summer months by homeowners while renting out main dwelling.

Letters/Referrals/E-mails from Town Departments

3/2/2016 Board of Appeals staff submitted to the file old Assessors' cards showing the main dwelling (ca 1929), cottage (remodeled 1973) and barn (ca 1973) on subject property

3/2/2016 Planning Department submitted a referral to the file with no comment.

3/4/2016 Marine & Environmental Services submitted a referral to the file with no comment.

3/8/2016 Building Commissioner Gore submitted a referral to the file with no comment.

3/15/2016 Falmouth Fire Rescue Department submitted a referral to the file with no comment.

4/6/2016 Engineering Department (S. Schluter) submitted a referral to the file that had standards comments and a 'Note': There are two visible buildings on the 1950 aerial photographs on record with our office.

Plans submitted by Applicant/Applicant's Representative

3/2/2016 "Site Plan" prepared for Jeraldine Lavender of 490 Hatchville Road Falmouth, MA drawn by J.E. Landers-Cauley, P.E. – Sheet 1 of 1 dated 01/04/2016, stamped and signed by John Landers-Cauley, PE and stamped, signed and dated 1/27/2016 by Gary S. Labrie, PLS – with a Board date 'received' stamp of March 2, 2016; and

"Existing Conditions Plan For: Hatch Hollow Trust 490 Hatchville Road East Falmouth, MA drawn by Cotuit Bay Design, LLC consisting of:

- Drawing EX4 'House Basement Plan' dated 2/2/2016 with Board date 'received' stamp of Apr. 13, 2016;
- Drawing EX2 'House First Floor Plan' dated 4/12/2016 with Board date 'received' stamp of Apr 13, 2016;
- Drawing EX3 'House Second Floor Plan' dated 2/2/2016 with Board date 'received' stamp of Apr. 13, 2016;
- Drawing A1 'First Floor Plan' (cottage) dated 2/2/2016 with Board date 'received' stamp of Mar. 2, 2016;

"Re-Built Cottage for: Jeri Lavender 490 Hatchville Road East Falmouth, MA drawing by Cotuit Bay Design, LLC consisting of:

- Drawing A1 'Basement and First Floor Plan' dated 4/12/2016 with Board date 'received' stamp of Apr. 13, 2016; and
- Drawing A2 'Elevations Cottage Plan' dated 4/12/2016 with Board date 'received' stamp of Apr. 13, 2016.

Hearing:

Steve Cook, Project Manager, reviewed the existing site conditions and proposed raze and reconstruction of the existing one-bedroom, one-story cottage on subject property. He noted that the application is filed under Section 240-3 A. as there are two dwellings on the property and noted that the Assessors' cards submitted to the file, aerial map of 1950's and two letters submitted to the file verify existence of both dwellings prior to May 19, 1959. Mr. Cook reviewed the history of subject property noting that the main dwelling was constructed in the 1920's and the cottage was later constructed. During the 1940's the then owners resided in the cottage in the summer months and rented out the main dwelling. Mr. Cook reviewed the proposed 'Site Plan' and noted that the reconstructed cottage will be relocated ten feet (10') forward on the property from where it currently exists. Both the main dwelling and the cottage have separate cesspools, which depending on inspection, may be adequate or may have to be eliminated and a new Title V septic system installed. He also noted that the cottage will remain a one-bedroom, one-story structure but will have a full basement where the mechanical utilities and storage will be located. The proposed cottage meets all dimensional requirements. The barn structure (circa 1973) on subject property and the cottage are located in front of the main dwelling, approximately 300 feet from the front property line off Hatchville Road.

The Board discussed proposed plans with Mr. Cook. All concerns and questions were addressed.

Acting Chairman Foreman asked for any public comment in support or opposition of the proposed project.

Jill Neubauer of 494 Hatchville Road stated support of the proposed reconstruction of the cottage and asked if outside lighting at the cottage could shine down and not towards abutters.

Steve Cook noted that there will be a light at the cottage entrance and it will be 'dark sky' lighting.

Member Potamis made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 - 0.

Acting Chair 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 490 Hatchville Road in Hatchville contains 1.534 acres of Agricultural A zoned land that is located within the Wildlife Corridor Overlay, Water Resource Protection Overlay District, the State Zone II Overlay and a portion of the land is within the Native Habitat for Endangered Species Program (Estimated). The applicant applied under Section(s) 240-3 A. of the Code of Falmouth to have the Town acknowledge the existence of two-dwellings on subject property prior to May 19, 1959 so that the cottage could be razed and reconstructed. The existing cottage is a one-story, one-bedroom unit that is located behind the existing barn structure (see plan). The main dwelling is circa 1920's and the cottage was noted by applicant's representative as circa 1940's. The barn structure (circa 1973) on subject property and the cottage are located in front of the main dwelling, approximately 300 feet from the front property line off Hatchville Road. The proposal is to raze existing cottage and reconstruct locating it approximately ten feet (10') closer to the barn (easterly), away from the main dwelling which is closest structure to Deep Pond. The cottage will remain a one-bedroom cottage through this special permit and may not have more than one-bedroom.

Section 240-3 of the Code of Falmouth – "Preexisting structures and uses." – Sub-section A. states: Except as hereinafter provided, this chapter shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the date of the first publication of notice of the public hearing on such bylaw required by MGL C. 40A, §5. Anything to the contrary in the zoning bylaw notwithstanding, the residential use of two or more dwellings on a single lot shall be deemed a preexisting nonconforming use if commenced prior to May 19, 1959, and may only be altered, extended or modified by special permit pursuant to this section provided the Board of Appeals finds through a preponderance of credible evidence that said use commenced prior to May 19, 1959, and has not been abandoned or not used for a period of two years or more. In approving any alteration, extension or modification the Board of Appeals shall require that the number of dwelling units shall be limited to the same as in existence on May 19, 1959.

The Board finds based on evidence submitted to the file and noted herein, that the existing main dwelling structure and cottage structure on subject property existed prior to May 19, 1959. The Board finds that the two letters submitted to the file gave credible evidence to the fact that not only both dwelling structures existing prior to May 19, 1959, but always noted [in letter from Anita Gunning] how the owner at that time used both structures. Furthermore, the Board finds that the Town's 'old' Assessors' cards submitted to the file lend further credible evidence of existence prior to May 19, 1959; and that the Engineering Department noted an aerial view of same structures existing in the 1950's.

The Board finds that the proposed raze and reconstruction of the one-bedroom cottage on subject property will be an improvement to the utilization of the structure; and proposed reconstruction of the cottage will not be more substantially detrimental to the neighborhood than the existing cottage. The Board further finds that the reconstruction of the cottage will be an upgrade to all utilities for said cottage that will create a safer and more energy efficient dwelling. Furthermore, the Board finds through testimony by the applicant's representative the proposed lighting at the cottage will be a 'dark sky' light that will not shine onto abutters property.

The Board finds through testimony by the applicant's representative that there are two existing cesspools on subject property; one servicing the main dwelling and the other servicing the cottage. In the event, inspection of the cesspools prior to proposed reconstruction of the cottage fails, a compliant Title V septic system, approved by the Board of Health, will be installed to service the main dwelling or the proposed

one bedroom cottage on subject property. Furthermore, in the event a Title V system is required by the Board of Health and modification of the "Site Plan" is required, then the Board will review a revised "Site Plan" administratively.

The Board finds through testimony by the applicant's representative that the proposed basement of the cottage will have an interior egress and that the basement will be used for mechanicals and storage. The Board further finds that the applicant's representative agreed that no bedroom or sleeping accommodations will be created with the proposed basement of the cottage.

In addition to the above findings, the Board finds that the proposed reconstruction of the one-bedroom cottage 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 raze and reconstruction of the one-bedroom cottage as it will remain a one-bedroom cottage and all setbacks and lot coverage will be in compliance with Sections 240-68 A. and B. [setbacks] and Section 240-69 A. of the Code of Falmouth [lot coverage].
- B. The site is suitable for the proposed use as the property consists of 1.534 acres and will remain substantially unchanged through the special permit approved herein.
- 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 will be determined by the Board of Health through an inspection of existing cesspool(s) prior to issuance of a building permit for raze and reconstruction of the cottage approved herein. It is noted that there will be no additional bedrooms on subject property through this approval.
- 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 from the Water Department submitted to the Board of Appeals regarding this application.
- G. The proposed cottage 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 raze and reconstruction of the existing one-bedroom cottage 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 Potamis made a motion to Grant the Special Permit with conditions. Member Murphy 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 Jeraldine Lavender (herein referred to as Applicant) under Section(s) 240-3 A. of the Code of Falmouth to have the Town acknowledge that (2) separate dwelling units existed prior to May 19, 1959 and to allow the raze and reconstruction of the pre-existing nonconforming second dwelling [cottage] on subject property known as 490 Hatchville Road, Hatchville, MA. This special permit is subject to the following conditions:

1. The raze and reconstruction of the cottage [second dwelling], all setbacks, lot coverage, height of structure, bedroom count and use of cottage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan" prepared for Jeraldine Lavender of 490 Hatchville Road Falmouth, MA drawn by J.E. Landers-

Cauley, P.E. – Sheet 1 of 1 dated 01/04/2016, stamped and signed by John Landers-Cauley, PE and stamped, signed and dated 1/27/2016 by Gary S. Labrie, PLS – with a Board date 'received' stamp of March 2, 2016; and

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- Drawing A2 'Elevations Cottage Plan' dated 4/12/2016 with Board date 'received' stamp of Apr. 13, 2016.

2. There shall be no more than one bedroom within the cottage approved herein.

3. There shall be no bedroom or any sleeping accommodations created within the basement of the cottage approved herein.

4. In the event a Title V septic system is required for the cottage, any modification to the plan approved by the Board and noted in Condition 1 approve, will require administrative approval by the Board of Appeals.

5. The applicant shall have installed a 'dark sky' light at the cottage so that there is no impact onto abutter's properties.

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: 027-16

Applicant: JERALDINE LAVENDER, TRUSTEE of Hatchville, MA

Subject Property: 490 Hatchville Road, Hatchville, Massachusetts
Map 10, Section 01, Parcel 004, Lot 000

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 027-16 Lavender, TR / filed w/Town Clerk 5/5/16