

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPEAL NO: 029-17

APPLICANT/OWNER: CLSV ASSOCIATES LIMITED PARTNERSHIP of No. Falmouth, MA

SUBJECT PROPERTY: 0 Moraine Ridge Road and 30 Moraine Ridge Road, East Falmouth, MA
Assessor's Map: Map 011, Section 01, Parcel 029, Lot 020 (30 Moraine Ridge Rd)
Map 011, Section 01, Parcel 029, Lot 019 (0 Moraine Ridge Rd)
(now known as Lot 19A and Lot 20A Hill and Plain Road, East Falmouth, MA)

DEED/CERTIFICATE: Book 8944 / Page 170

SUMMARY: Modification of Variance Granted

PROCEDURAL HISTORY

1. Under a date of April 14, 2017, the applicant applied to the Zoning Board of Appeals for a Modification of Variances #118-93 and #147-04 pursuant to Section(s) 240-204 of the Code of Falmouth to relocate a building envelope on Lot 19 Moraine Ridge Road (now known as Lot 19A, Hill and Plain Road) and to separate an existing shared driveway into two separate driveways servicing Lots 20 and 19 on Moraine Ridge Road (now off Hill and Plain Road) in East Falmouth, 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 25, 2017. By request of the applicant's representative the Board voted to continue the hearing without testimony to June 15, 2017.
4. The public hearing was terminated on June 15, 2017, wherein the Board consisting of Acting Chairman Paul Murphy, Acting Vice Chairman Ed Van Keuren, Acting Clerk Robert Dugan and Gerald Potamis (Robert Dugan and Gerald Potamis are Associate Members sitting as voting members. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Michael B. McGrath, P.L.S. and P.E. with Holmes and McGrath, Inc., and Attorney Laura Moynihan 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

06/12/2017 Letter dated June 6, 2017 submitted to the file from Ballymeade Property Owners, Association President Joseph A. Novelline, Jr. stating support of the proposed change to a shared driveway and relocation of the building envelope.

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

04/14/2017 Michael B. McGrath, P.L.S., P.E. with Holmes and McGrath, Inc. submitted, on behalf of the applicant, an application, plans, fee, letter of authorization, a narrative dated 4/13/2017, previous Modification of Variance #147-04 and Variance #118-93

05/18/2017 E-mail from Michael McGrath, P.L.S., P.E., with Holmes and McGrath, Inc., requesting to continue the hearing to June 15, 2017 due to a conflict with the application

Letters/Referrals/E-mails from Town Departments

04/20/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment

04/20/2017 Referral submitted to the file from the Director of Assessing with no comment

04/25/2017 Referral submitted to the file from the Planning Department staff with no comment

05/12/2017 Referral submitted to the file from the Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Moraine Ridge Road is a Private right of way in this area. 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 public right of ways. We do not recommend the use of trench drains; they tend to clog easily.*

Plans submitted by Applicant/Applicant's Representative

“Plan of Land To Abandon Moraine Ridge Road” prepared for CLSV Limited Partnership in Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated August 2, 2004 – sheet 1 of 1 stamped and signed by Michael B. McGrath, PLS with a Board date ‘received’ stamp of April 14, 2017;

“Plan of Land” prepared for CLSV Limited Partnership for Lot 19A & 20A, Hill and Plain Road in Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 26, 2017 with a revised date of 6/14/17, stamped and signed by Michael B. McGrath, P.E. with a Board date ‘received’ stamp of June 15, 2017; and

“Study Plan” prepared for CLSV Limited Partnership for Lot 19A #29 Hill and Plain Road in Hatchville, Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated January 3, 2017 – Sheet 1 of 2 stamped and signed by Michael B. McGrath, PLS

with a Board date 'received' stamp of April 14, 2017 – a revised plan submitted June 14, 2017 colored in with information on zones and home site.

Hearing:

Michael B. McGrath, P.E. and Attorney Laura Moynihan were present on behalf of applicant and reviewed the plans submitted and the request to modify the variances to allow the 'shared' driveway to be separated and have a separate driveways servicing each lot and to relocate the building envelope on Lot 19 Moraine Ridge Road (now known as Lot 19A Hill and Plain Road). The applicant is requesting that the building envelope on Lot 19A be relocated more southerly on the lot due to terrain and topography. The plan shows that a 25' buffer along the east side property line from the Hill and Plain Road northerly half way along the lot line abutting Lot 18 (204 Hill and Plain Road) will be established. The 25' buffer consists of established natural vegetation that will not be disturbed through construction of a single-family dwelling on Lot 19A [subject property] or otherwise. One of the plans submitted shows the abandonment of Moraine Ridge Road that existed northerly from Hill and Plain Road separating Lot 19 and 20, thus making both properties frontage off Hill and Plain Road and now known as Lot 19A and Lot 20A Hill and Plain Road.

The Board discussed the plans with Mr. McGrath and Attorney Moynihan. All concerns and questions were addressed.

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

Barry Glasgow of Ballymeade Association stated endorsement of the proposed plan.

David House, 204 Hill and Plain stated opposition to the plan.

Austin Heath of 5 Paddock Circle stated support and requested that plans be revised and filed properly to insure all covenants with Association are correct.

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

Chairman Murphy 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 properties referenced on the Town of Falmouth Assessors' records as being located at 0 (Lot 19) and 30 (Lot 20) Moraine Ridge Road are within the development known as Ballymeade; 0 Moraine Ridge Road contains 2.92 acres and 30 Moraine Ridge Road contains 2.72 acres; both are in an Agricultural AA zoned district and located within a Zone II and Wildlife Corridor Overlay District. A plan has now been recorded at the Registry of Deeds that abandons Moraine Ridge Road and the two

lots as a result are now known as Lot 19A Hill and Plain Road and Lot 20A Hill and Plain Road. See "Plan of Land to Abandon Moraine Ridge Road" dated August 2, 2004 submitted to the file. The applicant applied under Section(s) 240-204 of the Code of Falmouth to allow a modification to a previous Variances on subject property due to a shared driveway and building envelopes. 0 Moraine Ridge Road (formerly Lot 19) did not have enough frontage and was therefore granted a Variance in 2004 - #147-04. Since then Moraine Ridge Road has been abandoned as noted above. The modification requested herein is to remove the 'shared' driveway and to allow each of Lot 19A and 20A to have a separate driveway servicing Lot 19A and Lot 20A Hill and Plain Road; and to relocate the building envelope for Lot 19 to be more southerly on the lot due to difficult terrain and topography of said lot as shown on the plan filed herewith.

The Board further finds through testimony by legal counsel and project engineer that the relocation of the building envelope for Lot 19A will allow for less disturbance of the lot, as well as less intensity and less removal of natural vegetation. The Board further finds that the plan shows a 25' buffer of natural vegetation along the east side of Lot 19A that will remain as a screening between abutting Lot 18 and Lot 19A. The owner of Lot 18 was present and had concern with the relocation of the building envelope and the 25' buffer will provide adequate screening of his concern.

The Board finds that it is in the best interest in the marketing of both Lots 19A and 20A to have separate driveways so has not to have an easement and shared responsibility of a common driveway. The Board further finds that separate driveways for Lots 19A and 20A are more beneficial and appropriate in servicing and maintainability for each respective lot.

Section 240-204 of the Code of Falmouth allows the Board of Appeals to approve a change or alteration of a previous granted Variance. The Board further finds overall that the standards and requirements of Section 240-204 of the Code of Falmouth exist with this application and property for the grant of modification of the variances requested in this application. Furthermore, the Board finds that the modification of the variances as requested are not more detrimental than the existing use permitted by the variances in the neighborhood and that there is no extension in physical area or an increase in intensity of the proposed use from the use originally approved or granted.

In addition to the above findings, the Board finds that the proposed modification of a Variance removing the 'shared driveway' requirement into two separate driveways to service each of the two properties (Lot 19A and Lot 20A) and relocation of the building envelope on Lot 19A as herein represented 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 modification of Variances to allow for two separate driveways to service each of the two lots separately as both lots are over 2 acres and the separate driveways will not have a negative or adverse impact to either lots.

B. The modification of the Variances is suitable for the proposed use as the property is within a residential development, the building envelope relocation on Lot 19A is suitable and appropriate for the reasons noted above, and the driveways will be maintained by respective lot owners.

C. There will be no impact on traffic flow and safety as the lots are within a residential development and consideration of traffic flow and safety was taken into account when the lots and development were created.

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 will be no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system will be addressed by the Board of Health when a permit is in place to construct a dwelling on the two lots discussed herein.

F. The property owners will apply for permits to allow utilities to the sites when application is made for construction of single-family dwelling.

G. The proposed relocation of the building envelope and separation of a share driveway into two separate driveways 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 as stated herein.

J. The approval of this special permit does not include any affordable housing.

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 Modification of the Variance as requested 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 Modification of Existing Variances #118-93 and #147-04** to CLSV Associates Limited Partnership (herein referred to as Applicant) under Section(s) 240-204 of the Code of Falmouth to relocate the building envelope for a single-family dwelling on Lot 19A and to remove the existing requirement of a shared driveway to allow two separate driveways to service Lot 19A and Lot 20A within the Ballymeade Development off Hill and Plain Road (formerly Lot 19 and Lot 20 Moraine Ridge), East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The separation of the shared driveway, previously approved in Variance #147-04, the creation of two separate driveways on respective Lots 19A and 20A and the relocation of the Building Envelope on Lot 19A shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plan of Land To Abandon Moraine Ridge Road" prepared for CLSV Limited Partnership in Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated August 2, 2004 – sheet 1 of 1 stamped and signed by Michael B. McGrath, PLS with a Board date 'received' stamp of April 14, 2017;
 - "Plan of Land" prepared for CLSV Limited Partnership for Lot 19A & 20A, Hill and Plain Road in Hatchville Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated May 26, 2017 with a revised date of 6/14/17, stamped and signed by Michael B. McGrath, P.E. with a Board date 'received' stamp of June 15, 2017; and

- “Study Plan” prepared for CLSV Limited Partnership for Lot 19A #29 Hill and Plain Road in Hatchville, Falmouth, MA as drawn by Holmes and McGrath, Inc. on a plan dated January 3, 2017 – Sheet 1 of 2 stamped and signed by Michael B. McGrath, P.L.S. with a Board date ‘received’ stamp of April 14, 2017 – a revised plan submitted June 14, 2017 colored in with information on zones and home site.
2. The owner of Lot 19A shall maintain at all times a 25’ buffer of existing natural vegetation between Lot 19A and abutting Lot 18 as noted in Condition 1 above and as shown on the “Study Plan” dated January 3, 2017 with a Board date ‘received’ stamp of June 15, 2017 (the “Plan”). The 25’ wide buffer shall be consistent along the easterly property line of Lot 19A from Hill and Plain Road approximately 360 feet northerly along said property line as shown on the Plan and shall consist of the existing natural vegetation to between Lot 19A and Lot 18.
 3. 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.
 4. 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 permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

Decision of the Falmouth Zoning Board of Appeals Continued:

Variance Modification Permit Number: #029-17

Applicant: **CLSV ASSOCIATION LIMITED PARTNERSHIP**

Subject Property: **0 and 30 Moraine Ridge Road, East Falmouth, MA
Map 11, Section 01, Parcel 029, Lot 019 (0 Moraine Ridge Rd) and
Map 11, Section 01, Parcel 029, Lot 020 (30 Moraine Ridge Rd)
(now known as Lot 19A Hill and Plain Road and Lot 20A Hill and
Plain Road)**

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 Modification of Variances #118-93 and #147-04 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Edward Van Keuren, Acting Vice Chairman

RECEIVED

JUN 22 2017

FALMOUTH TOWN CLERK

ADP10:25 am
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.