

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 038-17

APPLICANT/OWNER: DONALD P. MESCHISEN & KATHLEEN R. MESCHISEN, TRUSTEES
Of Meschisen Realty Trust

SUBJECT PROPERTY: 20 Circle Road, Waquoit, Massachusetts
Assessor's Map: Map 32, Section 20, Parcel 006, Lot 012

DEED/CERTIFICATE: Certificate No. 149339 – Plan 11210-C (Sheet 2)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 17, 2017 – amended on May 25, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-216 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-dwelling with attached garage on subject property known as 20 Circle 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 July 20, 2017.
4. The public hearing was terminated on July 20, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence J. Hurrie, Member Ed Van Keuren, Acting Clerk Paul Murphy and Associate Gerald Potamis (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Brian J. Wall with Troywall Associates, 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)

05/17/2017 Attorney Wall submitted, on behalf of the applicant, an application with fee, letter of authorization of representation, a narrative of proposed plans, copies of 1994 and 1998 Deeds, plans – existing and proposed plot plan and architectural plans, photographs of existing dwelling and attached garage

- 05/25/2017 The application submitted May 17, 2017 was amended and resubmitted to the file and Town Clerk on May 25, 2017 (to include 240-3)
- 06/27/2017 E-mail from Attorney Wall was submitted to the file responding to questions regarding proposed project from Zoning Administrator's e-mail to Attorney Wall on May 18, 2017

Letters/Referrals/E-mails from Town Departments

- 05/26/2017 Referral submitted to the file from the Planning Department staff with no comment
- 05/30/2017 Referral submitted to the file from the Director of Assessing with no comment
- 06/01/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/16/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Circle Road is a Private right of way in this area, and Seapit Road is a Public 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 right of ways. The applicant proposes a new driveway on Seapit Road; this will require a Driveway Permit. What is shown on the plans appears to be approvable. The site design includes drywells for the roof, and the driveway is not pitched towards the street so stormwater appears to be mitigated on site.*
- 06/20/2017 Referral submitted to the file from Conservation Commission states: *Notice of Intent hearing before ConCom, closed on 6/14/2017, taken under advisement for vote within 21 days.*
- 07/18/2017 ZBA staff submitted to the file a copy of the "Order of Conditions" approved by Conservation Commission on July 5, 2017

Plans submitted by Applicant/Applicant's Representative

"Existing Conditions Plan for #20 Circle Road" prepared for Kathleen Meschisen in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated April 7, 2017 – stamped, signed and dated by Gary S. Labrie, P.L.S. on 4/12/2017 and with a Board date 'received' stamp of May 17, 2017;

"Site Plan for #20 Circle Road" prepared for Kathleen Meschisen in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated April 7, 2017 – stamped, signed and dated by Gary S. Labrie, P.L.S. on 4/12/2017, stamped and signed by Michael J. Borselli, P.E. and with a Board date 'received' stamp of May 17, 2017;

"Septic System Details for #20 Circle Road" prepared for Kathleen Meschisen in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 3 of 3 dated April 7, 2017 – stamped and signed by Michael J. Borselli, P.E. and with a Board date 'received' stamp of May 17, 2017; and

"Meschisen Residence 20 Circle Road Falmouth, MA" drawings by Yarosh Associates, Inc. consisting of Drawing A-2 'Floor Plans' dated 12-15 and Drawing A-1 'Elevations' dated 12-15 – both with a Board date 'received' stamp of May 17, 2017.

Hearing:

Attorney Brian Wall reviewed the existing and proposed site conditions explaining that the existing lot is on a 1926 plan, the dwelling is circa 1935 and the applicant has owned the property since 1994. The applicants created this 33,000 square foot lot by merging three existing lots into one lot – the ‘Approval Not Required’ (ANR) plan has been filed with Land Court. There is an existing cesspool that will be removed and a new three-bedroom septic system will be installed as shown on the plans submitted. He reviewed the existing nonconforming setback from the main structure to the front property line off Circle Road of 23.7’, the nonconforming setback of the detached garage to the front property line off Circle Road of 9.3’ that is required to be no less than 50’ from front property line and a 4.7’ nonconforming setback to the side yard property line that requires a 10’ setback. Attorney Wall explained that he has met with the Building Commissioner regarding designation of a front yard to be that of Seapit Road as the property has two front yards – Seapit and Circle Road; the Building Commissioner has not responded with a determination to date. In the event the Building Commissioner allows Seapit to be the front yard, the garage will then be nonconforming to a 10’ setback and not a 50’ setback. The rear of the structure has a nonconforming setback of 36’ to the 3’ contour line off the waters of Seapit Road that requires a 50’ setback. The proposed plan shows that the front yard setback of the dwelling will become in compliance with a 25’ setback, and the nonconforming setback to the 3’ contour line will be improved from a 36’ setback to a 39’ setback. The dwelling will be a three-bedroom dwelling (increasing from 2 bedrooms); new septic system installed and cesspool removed. The height of the dwelling will be 29.5’ in height. Conservation Commission has approved the project and an ‘Order of Conditions’ has been issued.

The Board discussed plans with Attorney Wall. All concerns and questions were addressed.

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 Murphy seconded the motion. Motion carried 5 - 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 20 Circle Road in Waquoit contains 33,390 square feet of Residential C zoned land that is located within the Head of Waquoit Bay Coastal Pond Overlay District (Seapit River). The applicant applied under Section(s) 240-3 C. and 240-216 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The detached garage will remain as existing with no change. The existing lot was created through three (3) lots being merged – the three (3) lots were on a 1926 plan and the ANR plan merging the lots is on file with the Land Court (lots are registered). The existing structure has a nonconforming setback to the front property line off Circle Road of 23.7’ that requires a 25’ setback pursuant to Section 240-68 A. of the Code of Falmouth; the dwelling structure also has a nonconforming setback of 36’ to the 3’ contour line off the waters of Head of Waquoit Bay that requires a 50’ setback pursuant to Section 240-68 D. of the Code of Falmouth. The existing detached garage structure that will remain untouched through this special permit is also nonconforming with setbacks to the front and side yard by an accessory structure pursuant to Section 240-68 A. (8) that requires no accessory structure in a front yard less than 50’ from the front property line and requires a special permit to allow being in a front yard; and side yard setback for an accessory structure is 10’ pursuant to Section 240-68 B. of the Code of Falmouth, the garage exists at 4.7’ to the side property line. The existing dwelling is two bedrooms and will increase to a three-bedroom dwelling through this approval. The

existing cesspool(s) will be removed and a new Title V septic system will be installed to accommodate the three (3) proposed bedrooms.

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 further finds that the nonconforming front yard setback will be brought into compliance with a 25' setback and the nonconforming setback to the 3' contour line off the waters of Head of Waquoit Bay will be less nonconforming from 36' to 39'. Furthermore, the Board finds through testimony that the applicant has approached the Building Commissioner to determine that Seapit Road can be a front yard and the property line off Circle Road may then be a side yard (See Section 240-13 "Definitions" – 'Yard, front'). If the Building Commissioner designates Seapit Road as the 'front yard' then the detached garage will be less nonconforming to a front yard at the existing 9.3' setback instead of the nonconforming issue of an accessory structure being in a front yard less than 50' and thus requiring a special permit. However, it is noted that the detached garage is found to be nonconforming as it has existed as such for several years.

The Board finds that the plans for reconstruction of the dwelling will definitely enhance the utilization of a dwelling by its residents and will be brought up to building and fire safety standards. The Board further finds that the reconstruction of the dwelling will add a third bedroom and an attached two-car garage – with the existing detached garage to remain as is. Furthermore, the Board finds that the plans show a new Title V septic system to be installed approximately 10' from the front property line off Seapit Road which is over 200 feet from the Coastal Bank of the waters of the Head of Waquoit Bay Overlay District (Seapit River); and that the existing cesspool(s) will be removed.

The Board finds that the proposed plans slightly improve impervious area to pervious area. The Board further finds that the proposed project has been reviewed by Conservation Commission and an 'Order of Conditions' dated July 5, 2017 has been issued and a copy of said Orders submitted to the file.

The Board finds through testimony of the applicant's representative that the proposed deck is not attached to the dwelling – see Drawing Number A-1 by Yarosh Associates, Inc., however, the deck is calculated within the lot coverage by structures. The Board further finds through testimony by the applicant's representative, the height of the proposed structure will be 29.5' as measured from the mean grade off Seapit Road. It is noted that the elevations plans drawn by Yarosh Associates, Inc. – Drawing A-1 do not show the height of the proposed dwelling.

In addition to the above findings, the Board finds that the proposed reconstructed single-family dwelling 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 reconstruction of the dwelling as the front yard setback to Circle Road will become compliant with Section 240-68 A. of the Code of Falmouth and the setback to the 3' contour line off the waters of Head of Waquoit Bay will be less nonconforming going from 36' to 39' setback; and lot coverage remains in compliance with Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be a single-family dwelling, with three (3) bedrooms through this special permit approval.

C. There does not appear to be any impact on traffic flow and/or safety with the increase of one additional bedroom. There is an existing driveway off Circle Road and a proposed driveway off Seapit that will give access to the new garage that will be attached to the dwelling; the existing detached garage off Circle Road driveway 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 the house is setback from the roadway approximately 184 feet; and there is no impact on any view or vista from the roadway or abutting properties.

E. The existing cesspool is to be removed and a new Title V three-bedroom septic system is to be installed as approved 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 possible updating of water system as there was no referral submitted from the Water Department.

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 raze and reconstruction of the pre-existing nonconforming single-family 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 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 Donald P. and Kathleen R. Meschisen, Trustees of the Meschisen Realty Trust (herein referred to as Applicant) under Section(s) 240-3 C. and 240-216 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-dwelling with attached garage on subject property known as 20 Circle Road, Waquoit, MA. This special permit is subject to the following conditions:

1. The razing of existing dwelling, reconstruction of new three-bedroom dwelling with attached garage, septic system, all setbacks, height of dwelling, lot coverage and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Existing Conditions Plan for #20 Circle Road” prepared for Kathleen Meschisen in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated April 7, 2017 – stamped, signed and dated by Gary S. Labrie, P.L.S. on 4/12/2017 and with a Board date ‘received’ stamp of May 17, 2017;
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2. There shall be no more than three (3) bedrooms on subject property.
3. There shall be no bedrooms or sleeping accommodations allowed within the basement space.
4. 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.
5. The Applicant shall meet the requirements of the DPW Water Division.
6. 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.)
7. 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: **038-17**

Applicant: **Donald P. Meschisen and Kathleen R. Meschisen, Trustees of Meschisen Realty Trust of Action, MA**

Subject Property: **20 Circle Road, Waquoit, Massachusetts
Map 32, Section 20, Parcel 006, Lot 012**

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, Vice Chairman, Board of Appeals

RECEIVED
JUL 31 2017

FALMOUTH TOWN CLERK

AD @ 12:32 PM

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.