

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

VARIANCE NO: 046-18

APPLICANT/OWNER: MOTT L. L. GROOM and BARBARA GROOM of Albuquerque, NM

SUBJECT PROPERTY: 70 Ostrom Road, Waquoit, Massachusetts
Assessor's Map: Map 31 Section 04 Parcel 010 Lot 004

DEED/CERTIFICATE: Book 7950 / Page 106

SUMMARY: Variance Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 13, 2018, the applicant applied to the Zoning Board of Appeals for a Variance pursuant to Section(s) 240-203 for relief under Section(s) 240-88 and 240-89 of the Code of Falmouth to construct a dwelling within the 50' setback of the Area of Critical Environmental Concern (ACEC) on subject property known as 70 Ostrom 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 August 2, 2018. The applicant requested a continuation to September 20, 2018.
4. The public hearing was closed on September 20, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Ed Van Keuren, Member Paul Murphy and Associate Robert Dugan (sitting as voting member) made a decision to Grant the Variance with condition(s). Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Kevin P. Klauer II with Ament Klauer LLP who reviewed and discussed the requested Variance 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)

09/13/2018 Attorney Klauer submitted a letter to the file dated September 13, 2018 providing additional information to the Board regarding the request for a Variance on subject property

Letters/Referrals/E-mails from Town Departments

- 06/18/2018 Referral submitted to the file from the Planning Department with no comment
- 06/18/2018 Referral submitted to the file from Director of Assessing noting that property includes Lots 4 and 4A
- 06/20/2018 Referral submitted to the file from the Water Department that states: *Applicant must submit plan for approval to the Water Dept. Minimum 1" service but likely a 2" water service will be required.*
- 06/21/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/18/2018 Referral submitted to the file from Town Engineering Department with standard comments and a note that no driveway is shown on the plan and comments on recommended drainage for stormwater runoff – including for design of driveway

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Marine Environmental Services, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Plan of Land to Accompany a Variance Request at 70 Ostrom Road Falmouth, Massachusetts” prepared for Mott Groom on a plan drawn by BSS Design, Inc. dated June 12, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of June 13, 2018; and

“Plan of Proposed Building Setback Line at 70 Ostrom Road Waquoit, Falmouth, Massachusetts” prepared for Mott Groom on a plan drawn by BSS Design, Inc. dated September 12, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of September 13, 2018.

Hearing:

Attorney Klauer reviewed the site that is a 42,600 square foot, Residential A zoned lot that is in the AE13 flood zone and has a unique shape. The lot was created through a 1986 subdivision plan with a 20' wide entrance extending 260' from Ostrom Road to its widest portion. The appellants purchased the property in 1992 and have been paying taxes on the property as a buildable lot for twenty-six (26) years. In 2014 FEMA changed the flood zone maps which changed the location of the flood zone and elevation requirements for the general area. This change impacted the Area of Critical Environmental Concern (ACEC) buffer zone, which is fifty feet (50') landward from the edge of the ACEC (being the flood zone boundary) by moving that buffer zone substantially to the north and east, which rendered the lot unbuildable. The appellant is seeking relief through a variance under Section 240-203 of the Code of Falmouth to be allowed to build no closer than 20' to the ACEC buffer instead of the required 50'. The request is based on the fact that a literal interpretation of the bylaw would result in an economic hardship to the appellant due to the unique shape and topography of the property, as affected by the change to the FEMA. Attorney Klauer noted that all setback requirements under Sections 240-68 A. and B. will be in compliance. He reviewed a proposed site plan that shows a dwelling structure that could only be built

within a certain envelope of the lot. He further noted that up until 2014 [change to FEMA regulations] a much larger area of the lot was buildable.

The Board discussed the building envelope, variance and the criteria for a variance with Attorney Klauer. Discussion of the River Act (under Conservation Commission's jurisdiction) was also discussed as an additional protection for environmental concerns.

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

Jack Mandelbaum of 60 Ostrom Road stated opposition and that the majority of the neighbors are strongly opposed to the application. He stated he had an offer in to buy the property if negotiations go forward.

Sari Budrow, Zoning Administrator stated that the Board of Appeals did not receive any letters, comments or emails from any abutters or interested parties stating that you can represent them in this appeal; and that the discussion of purchase of subject property is out of the scope of the Board's purview. She asked that the abutters apply comments to the variance/zoning.

Bernice Mandelbaum of 60 Ostrom Road asked if the staked area for a dwelling could be moved within the envelope.

Attorney Klauer stated that the project is in line with the development of other lots within the area and is not damaging to the environment; the ACEC setback affects the lot due to its unique shape; and lessening the buffer to the ACES is appropriate in this case as a literal enforcement of the provisions of the bylaw would incur a substantial hardship to the appellant.

Board discussed.

Member Foreman made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Chairman Hurrie 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 70 Ostrom Road in Waquoit contains 42,600 square feet of Residential A zoned land that is located within the Hamblin Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-203 of the Code of Falmouth for a variance to allow a dwelling to be constructed within the 50' setback of the Area of Critical Environmental Concern (ACEC) on subject property – Sections 240-88 and 89 of the Code of Falmouth. The unique shaped subject property was created in 1986 and the appellants have owned said property since 1992, paying taxes on it as a buildable lot. In 2014 FEMA regulations were amended and due to changes of the regulations the ACEC was moved landward, affecting several properties along Waquoit Bay and Red Brook (general area). The applicant submitted correspondence dated September 13, 2008 with attached Exhibits A through D showing the property flood zones and elevations from 1986 to the current flood zones and elevations. The Exhibits show that in 1986, until FEMA regulations amended in 2014, there was a

larger building envelope for a dwelling that would not require a variance or special permit to construct said dwelling.

Section 240-203 of the Code of Falmouth allows the Board of Appeals to grant an appeal to particular land or structures where the Board finds that due to circumstances relative to soil conditions, shape or topography of a lot or structures and specifically affecting said lot or structure but not affecting the general zoning district in which the lot is located and may involve substantial hardship, financial or otherwise to the appellant. The bylaw allows desirable relief without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the bylaws.

The Board finds that the unique shape of the subject property, created in 1986, is unlike other properties in the general area. The Board further finds that due to the amendment to FEMA regulations, some existing dwellings within the area would need a variance as well if being constructed current day. Furthermore, the Board finds that the current FEMA regulations adopted in 2014 render the subject property unbuildable without a variance due to the change noted herein to the topography.

The Board finds that due to the change in the FEMA regulations the ACEC boundary for the lot was previously at elevation 11, as measured by the National Geodetic Vertical Datum (“NGVD”) and now is at elevation 13, as measured by the North American Vertical Datum (“NAVD”) and that said increase has relocated the ACEC buffer zone almost 50’ closer inland and due to the shape and topography of the lot the relocation of the ACEC has resulted in a situation where a literal enforcement of Sections 240-88 and 240-89 would result in a substantial hardship to the applicant. The Board further finds that the footprint/building envelope for a dwelling on subject property cannot be more than what is allowed under the River Acts which is governed by the Conservation Commission and that prior to any construction for a dwelling, the appellant will be required to file with Conservation Commission for approval. Furthermore, the Board finds that a variance is appropriate to allow a 20’ setback to the ACEC that would provide an envelope for a dwelling to be constructed.

In addition to the above findings, the Board finds that the relief given herein for a variance to allow a single-family dwelling to be constructed on subject property as discussed and represented, will be in harmony with the general purpose and intent of Section 240-203 and Massachusetts General Laws Chapter 40A, Section 10.

Member Murphy made a motion to Grant the Variance with conditions. Member Dugan seconded the motion. Motion carried 4 to 1 with Member Foreman 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 Variance** to Mott L.L. Groom and Barbara J. Groom of Albuquerque, New Mexico (herein referred to as Appellant) under Section(s) 240-203 of the Code of Falmouth to allow a dwelling to be constructed within the 50’ setback of the Area of Critical Environmental Concern (§§240-88 and 89) on subject property known as 70 Ostrom Road, Waquoit, Massachusetts. This Variance shall be subject to the following conditions:

1. Any dwelling built on subject property described herein shall be constructed in substantially the same footprint of the dwelling shown on the plan submitted to the file and entitled:

- “Plan of Land to Accompany a Variance Request at 70 Ostrom Road Falmouth, Massachusetts” prepared for Mott Groom on a plan drawn by BSS Design, Inc. dated June 12, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of June 13, 2018; and
 - “Plan of Proposed Building Setback Line at 70 Ostrom Road Waquoit, Falmouth, Massachusetts” prepared for Mott Groom on a plan drawn by BSS Design, Inc. dated September 12, 2018 – plan is stamped and signed by Thomas Jackson Bunker, PLS and has a Board date ‘received’ stamp of September 13, 2018.
2. The appellant shall file with the Conservation Commission for approval of the plan noted in Condition 1 above prior to any issuance of a building permit.
 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. The Applicant shall meet the requirements of the DPW Water Division.
 5. This Variance 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.
 6. This Variance shall lapse one (1) years from the date on which this decision is filed in the Town Clerk’s office.

Decision of the Falmouth Zoning Board of Appeals Continued:

Variance Number: **046-18**

Appellant/Property Owner: **MOTT L.L. GROOM and BARBARA J. GROOM of Albuquerque, NM**

Subject Property: **70 Ostrom Road, Waquoit, Massachusetts
Map 31 Section 04 Parcel 010 Lot 004**

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 Variance as represented to the Board, based on the Findings stated herein and with the above stated Condition(s).



Terrence Hurrie, Chairman, Board of Appeals

RECEIVED

OCT 05 2018

FALMOUTH TOWN CLERK

8:35 AM

Date Filed With Town Clerk

Q

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.