

**TOWN OF WENHAM
ZONING BOARD OF APPEALS
RECORD AND DECISION**

GRANT OF SPECIAL PERMIT RELIEF

21 Longfellow Road, Wenham Massachusetts
Petitioners Pamela and Yianni Katsiris

The Zoning Board of Appeals for the Town of Wenham, Massachusetts, conducted a public hearing at Town Hall on Wednesday, May 31, 2017, to consider the April 26, 2017 Petition of Pamela and Yianni Katsiris of 26 Ravenwood Road, Peabody, MA (“Petitioners”) for a Special Permit pursuant to Wenham Zoning Bylaw (“ZBL”) §4.4.3.4, to permit the demolition of a nonconforming single-family dwelling and the reconstruction of a single-family dwelling in a volume that exceeds the volume or area of the original nonconforming structure and with the new structure to be located other than on the original footprint (“Proposed Reconstruction”). The subject premises are off of the end of a paved access way known as Longfellow Road and are known as 21 Longfellow Road (Assessing Map 7, Lots 50 and 52) (“Property”).

Notice of the public hearing on Petitioners’ application was advertised and posted as follows and a true copy of the notice is on file in the Zoning Board of Appeals Office:

1. Published in *The Hamilton Wenham Chronicle*, a newspaper of general circulation in the Town of Wenham, on Thursday, May 11, 2017 and May 18, 2017.
2. Posted at the Town Clerk’s office on May 1, 2017.
3. Mailed on May 2, 2017 to Petitioners, abutters, owners of land directly opposite the Property on any public or private street or way, and abutters to abutter within 300 feet of the Property.

The public hearing opened and closed on May 31, 2017. Present at the public hearing session were Board Members Anthony M. Feeherry (Chairman); Jeremy Coffee; and Christopher Vance.

RELEVANT FACTS AND BYLAW PROVISIONS

The Property is located in a Residential District and an Aquifer Protection Overlay District. The Proposed Reconstruction is shown on a plan entitled: “ZBA Plot Plan, Map 7, Lots 50 & 52, 21 Longfellow Road, Wenham, Massachusetts,” as prepared for Petitioners Pamela and Yiannis Katsiris by Griffin Engineering Group, LLC of 495 Cabot Street, Beverly, MA 01915, and as dated April 21, 2017, as revised through May 31, 2017, and as stamped by Professional Engineer Robert H. Griffin and Professional Land Surveyor Vernon J. LeBlanc (“Plan of Record”).

Petitioners seek permission to demolish the remains of a nonconforming and damaged structure, which suffered a serious casualty loss on January 30, 2016, and to replace it with the single-family structure and garage and driveway shown on the Plan of Record.

Petitioners requested special permit relief under ZBL §4.4.3.4(Reconstruction after Catastrophe or Voluntary Demolition) to allow the structure to exceed the volume or area of the original nonconforming structure and in a location other than the original footprint of the nonconforming structure.

The Property has no legal frontage and accesses the nearest public way (Pleasant Street) over a private way that is not shown on an approved subdivision plan and does not provide lawful frontage for the Property or other area properties. The Plan of Record indicates that the Property has an area of approximately 17,020 s.f., which does not conform to the minimum lot area of 40,000 s.f., that is required in a Residential District. So, the Property is nonconforming as to frontage and lot area.

The current nonconforming dwelling does not conform to the minimum required front yard setback of 20 feet, having a setback of only 10 feet; however, the Proposed Reconstruction would conform to the 20-foot front yard setback requirement. The current dwelling conforms to minimum rear and side yard requirements and the Proposed Reconstruction would conform as well.

The Plan of Record indicates that the Proposed Reconstruction would result in an increase in volume, when the new structure (which would have 1,119 s.f.) is compared to the current structure (which has 919 s.f.) and the Proposed Reconstruction would relocate the new structure and would not be in the same footprint as the current nonconforming structure.

DECISION

Action on Application for Special Permit Relief pursuant to ZBL Sections 4.4.3.4. (Reconstruction): APPROVED 3 to 0.

VOTE: (Yes) Anthony M. Feeherry (Chairman), (Yes) Jeremy Coffey, (Yes) Christopher Vance

On May 31, 2017, after holding a public hearing and taking testimony from the Petitioners and members of the public and after reviewing all materials and comments received, and after the Board members individually visited the Property, the Board voted to close the public hearing and then deliberated toward a decision.

The Board made the following findings of fact:

- The Board determined that all notice provisions of G.L.c.40A, §§9 and 11 and ZBL §13.4 were satisfied.
- The Board determined that the Petitioners have the right to rebuild the existing nonconforming structure in its present location.

- The Proposed Reconstruction at the Property as shown on the Plan of Record would increase the volume of the nonconforming structure and relocate the structure to a new footprint, so relief under ZBL §4.4.3.4.2.b is required.
- The existing dwelling at the Property is a lawfully nonconforming structure as the Property has no lawful frontage and is undersized.
- The Board found that the Property is eligible for relief under ZBL §4.4.3.4.2.b, which provides that:

4.4.3.4 Reconstruction after Catastrophe or Voluntary Demolition

Any nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions:

- 1) Reconstruction of a nonconforming structure affected by a catastrophe shall commence within two years after such catastrophe; and
- 2) In the case of voluntary demolition, a nonconforming structure may be reconstructed subject to the following conditions:

- a) Where the proposed reconstructed building shall be located on the same footprint as the original nonconforming structure, and contains the same volume or area as the original nonconforming structure, such reconstruction shall be completed within two years of demolition upon the issuance of a building permit.
 - b) Where the proposed reconstructed building (a) causes the structure to exceed the volume or area of the original nonconforming structure or (b) causes the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition and such reconstruction shall be completed within one year of demolition.
- The Board reviewed the special permit criteria set forth under ZBL §13.4, which require that the special permit granting authority shall determine whether the adverse effects of the proposed project would outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.

The Board is required to consider and did consider each of the following criteria as noted below:

(1) **Community needs.**

The Board found that there will be no change in community needs from what is needed for the current dwelling, were it to be rebuilt in place.

(2) **Traffic flow and safety, including parking and loading.**

The Board found that the Petitioners have the right to rebuild the existing dwelling and the new structure shall be limited, as conditioned below, to a two-bedroom use and the parking of no more than two vehicles on a regular basis and no boats or trailers, so the traffic and parking will not exceed what is presently allowed.

(3) **Adequacy of utilities.**

The Board found that there will be no change in the utilities, except that there will be a new, compliant septic system that will be required.

(4) **Neighborhood character.**

The Board found that the Petitioners have the right to rebuild the existing structure and that the new structure, which shall be limited, as conditioned below, to a two-bedroom use, will be in keeping with the neighborhood character.

(5) **Impacts on the natural environment.**

The Board found that there will be a new septic system that will be required to comply with Title V requirements and this will be an improvement.

and

(6) **Potential fiscal and economic impact, including impact on Town services, tax base and employment.**

The Board found that the Property will remain on the Town's tax roles and will not be changed and it is not anticipated that there will be additional impacts on Town services that would exceed the impacts that would occur if the existing dwelling were rebuilt as there is a right to do.

- The Board determined that the increase in volume and the change in location of the structure would not have a greater adverse impact on community needs, traffic flow, existing utilities (water and electric service), neighborhood character, the natural environment or fiscal impacts than would result if the existing structure were simply rebuilt in the same location as the Petitioners have the right to do.
- The Petitioners previously proposed a structure that would have been larger and the Petitioner have eliminated the need for dimensional variance relief and that allowed the Board to conclude that the Proposed Reconstruction will not have a greater impact than the were the current nonconforming structure to be rebuilt in the same location, provided that the conditions set forth below are imposed and satisfied at all times.

CONDITIONS OF APPROVAL:

The grant of special permit relief set forth herein shall be subject to the following conditions:

1. The Proposed Reconstruction shall occur only in strict compliance with the Plan of Record, including installation of dry wells and the other features shown on the Plan of Record.
2. The Proposed Reconstruction shall adhere to minimum front yard, side and rear yard requirements of ZBL §5.1.
3. Under no circumstances may the height of any portion of the Proposed Reconstruction exceed a height of 35feet, as required under ZBL §5.1.
4. Under no circumstances shall any portion of the garage, including any loft area above the garage, be improved or used for any dwelling purposes, except the accessory purpose of a vehicular garage.

5. No additional rooms or furnished areas shall be added to the new dwelling and the rooms shall be as shown on the Plan of Record.
6. **Before any building permit issues for the Proposed Reconstruction**, the Petitioners or their successors in interest shall provide proper evidence to the Building Official that a deed restriction has been duly recorded against the Property that is enforceable by the Town that:
 - Has been assented to by all owners and lienholders of record;
 - Is accompanied by a certificate of a licensed, independent attorney that certifies, based upon a title search, that all owners and lienholders of record have executed or assented to the restriction;
 - Expressly limits the use of the new dwelling at the Property to no more than a two-bedroom single-family dwelling use and it shall be owner-occupied;
 - Expressly includes all of the conditions imposed under this special permit; and
 - Has been properly accepted by the Town.

The Board determined that this restriction would render the new dwelling consistent with the character of the neighborhood and with the representations made to the Board by Petitioners.

7. The new dwelling shall not be modified to vary from the Plan of Record without a further Decision of this Board. The purpose of this is to insure that the Property shall be used for only as a two-bedroom dwelling (or a one-bedroom dwelling), consistent with the character of the neighborhood.
8. No more than two (2) vehicles shall be regularly parked at the site, whether registered or unregistered, and no boats or trailers shall be stored at the Property. The purpose of this restriction is to alleviate traffic concerns as the private access way is steep and narrow and shall not be burdened with more than the normal traffic that a two-bedroom home would generate. Any and all guest parking shall be on the Property.
9. The new dwelling at the Property shall be constructed in compliance with any and all other local and state requirements, including restrictions imposed by the Conservation Commission, the Board of Health, the Highway Department, the Board of Selectman and the Fire Department.
10. Due to the location and size of the proposed new dwelling and the current condition of Longfellow Road, which is narrow and steep and due to the fact that the current dwelling burned and could not be saved, a sprinkler system shall be installed in the dwelling as approved and required by the Wenham Fire Department.
11. If the Petitioners undertake improvements to a private way identified as Oak Street, the Board expresses no view as to the legality of those improvements and understands that any such improvements may require review by the Planning Board and, of course, Petitioners may only undertake improvements that they have the legal right to make and this Board makes no determination in that regard and certainly urges that any improvements be coordinated with area property owners.
12. The Board notes that the construction process for the new structure at the Property will involve heavy construction vehicles that will need to traverse Longfellow Road (as would heavy construction vehicles need to traverse Longfellow Road if the

existing nonconforming structure were demolished and rebuilt in its existing location) and the Board cautions the Petitioners that the vehicular traffic may have an adverse effect on the condition of Longfellow Road.

Before any building permit issues and any construction begins, the Petitioners shall take photographs of the condition of Longfellow Road and present those photographs to the Building Official, with the application for a building permit.

Before any occupancy permit issues, the Petitioners shall take post-construction photographs of the condition of Longfellow Road and present those photographs to the Building Official, so as to confirm that Longfellow Road has not been adversely impacted and to provide evidence of any damage. We encourage (but do not require) the Petitioners to discuss potential roadway improvements to Longfellow Road with the Highway Department.

13. Outdoor construction activity at the Property, because of its close proximity to other homes, shall be limited to the hours of 8:00 am through 4 pm, Monday through Friday, and no outdoor construction activity shall take place on weekends or federal or state holidays.
14. Possible signage and improvement to pathway to Pleasant Pond (discuss).
15. The construction activity at the Property shall occur in compliance with the Town's Earth Removal By-Law.
16. The construction activity at the Property shall conform to Conservation Commission approval and requirements.
17. Before any occupancy permit issues, the Property shall have six inches of loam installed and the yard shall be seeded and the lawn established and at least XX trees with a diameter of X inches and height of XX feet shall be installed.
18. Any exterior lighting for the new dwelling at the Property shall be dark sky compliant and shall be the maximum necessary for the safety and shall be designed and shielded so as to prevent glare and light spillage beyond any boundary line for the Property.
19. This special permit shall not take effect until it is recorded at the Registry of Deeds against the Property.
20. This special permit shall not be exercised unless and until the required deed restriction has been finalized and be certified by an independent licensed attorney, based upon a proper title examination, that all owners and lienholders of record have signed or assented to the restriction and it has been accepted by the Town.
21. This special permit shall be exercised within two years of its grant or it shall lapse and be of no further force and effect.
22. This special permit shall lapse and be of no further force and effect if the new structure allowed hereunder is not constructed within one year of the demolition of the nonconforming structure.

We attest that this decision accurately reflects the Boards determinations.

Anthony M. Feeherry (Chairman)

Jeremy Coffey

Christopher Vance

DATE:

FILED WITH THE TOWNCLERK ON: _____

Notice to Petitioners and Interested Parties on: _____

Any appeal, by an aggrieved party, shall be filed within twenty days of the filing of this decision with the Town Clerk, in accordance with the requirements of G.L. c.40A, §17.

I hereby certify that either: (i) 20 days have elapsed from the date this decision was filed with the Office of the Town Clerk and no notice of appeal was timely received; or (2) a notice of appeal was timely received and I have been afforded evidence that the appeal is final and affirmed the decision.

Wenham Town Clerk