



# **TOWN OF FALMOUTH**

## **ZONING BOARD OF APPEALS**

59 TOWN HALL SQUARE, FALMOUTH, MA 02540  
508-495-7460 – FAX 508-495-7463

Zoning Board of Appeals  
Attn: Board Members  
59 Town Hall Square  
Falmouth, MA 02540

March 5, 2020

**RE: Minutes for Public Hearings and Open Meeting held on February 6, 2020 at 6:30 PM in the Selectmen's Meeting Room – Town Hall Square**

Dear Board Members:

The attached minutes as referenced above are respectfully submitted for the Board's approval and to be filed with the Town Clerk:

**072-19 Mullen, 410 Surf Drive, Falmouth**  
**085-19 Chase, 118 Bywater Court, Falmouth**  
**086-19 Leddy, 105 Silver Beach Avenue, North Falmouth**  
**089-19 McFarland, 34 Hudson, Street, Falmouth**

Terrence Hurrie, Chairman of Board of Appeals

RECEIVED  
MAR 9 2020 AM 11:38

Date Minutes filed with Town Clerk:

\_\_\_\_\_  
Town Clerk Stamp

TOWN CLERK

Respectfully submitted  
Ashley DeMello, Office Assistant  
Noreen Stockman, Zoning Administrator

**Zoning Board of Appeals  
Selectmen's Meeting Room – Town Hall  
Minutes of February 6, 2020 at 6:30 PM  
Zoning Administrator: Noreen Stockman  
Absent: Foreman, Potamis**

**Public Comment - none**

**#072-19 Mullen, 410 Surf Drive, Falmouth**

This hearing was inadvertently added to the agenda for February 6, but was actually announced to be continued on February 20, 2020. The Board announced that the case will be heard on February 20, 2020.

Application #	Applicant Name:	Address:	
085-19	Chase	118 Buwack Ct. Fairmouth	
Document (s) Submitted	Date Submitted:	Submitted By:	
Application / fee	12/10/19	BSS	
Owner authorization	12/10/19	}	
(5) copies site plan	12/10/19		
(5) sets <sup>fire plans / elevation</sup> a/d. drawings	12/10/19		
Preques + a buffer list	12/10/19		(AW)
Prequest referencel	12/11/19		(AW)
Referml - wastewater	12/12/19	(AW)	
Referml - Health	12/12/19	(AW)	
Revised plot plans	12/12/19	(AW)	
Referml - Fire	12/12/19	(AW)	
Referml - Planning	12/12/19	(AW)	
Referml - Assessors	12/18/19	(AW)	
Cert. a buffer list	12/18/19	(AW)	
Conservation referml	1.10.20	(AW)	
eng. memo referml	1.15.20	(AW)	
i/c calculations	1.30.20	(AW)	
Ret'd a buffer list	2.3.20	(AW)	

**Zoning Board of Appeals  
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**#085-19 Chase, 118 Bywater Court, Falmouth** – requesting a special permit to expand habitable space on the 2<sup>nd</sup> floor

Voting members: Hurrie, Dugan, Van Keuren, Barry, Morse

Dugan read the 'Notice of Public Hearing' into the record and read the following referrals:

Wastewater – connected to town sewer, no increase in bedroom count, would not trigger flow neutral by-law requirement

Health – property on town sewer

Planning – no comment

Fire – no comment

Assessors – no comment

Conservation – Approved under RDA on 11/20/19, AE 12 flood zone

Memo from Engineering – Standard comments

**Correspondence** – none

Thomas Bunker, project engineer / representative for applicant – I had to make a change to the plans in the lot coverage calculation (submitted revised copies of plot plan). The house is nonconforming to setbacks and lot coverage. There is no change in lot coverage by structures. The lot coverage by structures is 27.11%, and will not change. The dwelling is sited 19.4' from the front yard (street) setback, 7.2' from the east side, the right and rear setbacks conform to zoning. The ridge height is 25.5' which conforms. The structure is in the AE 12 flood zone, not a velocity zone. The Conservation Commission has issued a negative decision, which means we can move forward, without needing their approval. The new addition on the 2<sup>nd</sup> level is an additional 230 s/f, which will run front to back. The new roof line will be lower than the existing roof line, and helps to break up the bulk. The house will fall into the middle of the bulk calculations; it's not out of bounds with the other surrounding properties. There's no change in lot coverage, setbacks or height. The project meets the criteria of 240-216.

**Board Discussion** –

Dugan – What measures will be taken for roof runoff; are there drywells?

Bunker – We aren't increasing roof area, I'm not sure if there are drywells, I would have to check.

Hurrie – Proposed height?

Bunker – It's lower. It looks to be about 2' lower than the existing roof which is 25.5'; it does not add to the perceived bulk, and fits within the neighborhood.

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**Public Comment - none**

Dugan made a motion to close the hearing. Morse seconded the motion. Motion carried 5-0.

Dugan made a motion to approve application #085-19. Morse seconded the motion. Motion carried 5-0.

**Findings**

- 1) Town sewer
- 2) No new nonconformities
- 3) 3 bedrooms
- 4) Does not trigger flow neutral bylaw
- 5) Change in roof line helps with bulk
- 6) Bulk calculations submitted; house falls in middle
- 7) Not sure if there are existing gutters or drywells
- 8) Concom approved RDA on 11/20/19
- 9) Meets 240-216, 240-3 C.
- 10) Main ridge height is 25'5
- 11) Non-conforming setbacks not changing

**Conditions**

- 1) Per revised plans
- 2) Stormwater measure for new roof addition, if nothing exists

All in favor 5-0.

Application #	Applicant Name:	Address:
026-19	Hreddy	105 Silver Beech
Document (s) Submitted	Date Submitted:	Submitted By:
Application / Fee	12/10/19	BSS
Existing Pictures	12/10/19	}
(5) Copies Site plan	12/10/19	
(5) Sets - arch drawings	12/10/19	
Request Abulkis	12/10/19	
Owner authorization	12/10/19	BSS
Request returns	12/11/19	(AW)
Referral - Health	12/12/19	(AW)
Referral - Planning	12/12/19	(AW)
Referral - Fire	12/17/19	(AW) / Fire
Referral - Consent	1.10.20	(AW)
Letter in opposition	1.28.20	(AW)
Email to rep. officials	1.28.20	(AW)
Letter w/ attachments	1.30.20	(AW)
Eng. referral	1.30.20	(AW)
Owner authorization (left)	2.3.20	(AW)
Letter in opposition (Bunomo)	2.3.20	(AW)
Lot Covenants Chart	2.4.20	(AW)
Letter Support - Fernandes	2.5.20	(AW)
Letter Support - Bouchie	2.5.20	(AW)
Letter Support - Reddy	2.5.20	(AW)
Letter Support - Fulcone	2.	

**Zoning Board of Appeals  
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**#086-19 Leddy 105 Silver Beach Ave., North Falmouth** – requesting a special permit to raze and reconstruct dwelling

Voting members: Hurrie, Dugan, Van Keuren, Barry, Morse

Dugan read the 'Notice of Public Hearing' into the record and read the following referrals:

Health – property on sewer – refer to Wastewater Dept.

Planning – no comment

Fire – no comment

Assessor – no comment

Conservation – Approved via RDA 12/18/19, AE 15

Memo from Engineering – standard comments; obtain approved driveway permit and post bond, limit of work should be shown on revised plans, provide erosion and sediment control, no stormwater runoff, post house number per section 99-1

**Correspondence –**

3 letters in opposition; 8 letters in support

\*\* Dugan – Noted to the public at-large: Please submit any letters to the Board, not individually. There was a letter that was submitted to the Board directed to a specific member who is not here; it was submitted to the file and made part of the record\*\*

Kevin Klauer, Attorney, representative for applicants (with Tom Bunker, engineer)– The applicants would like to raze and reconstruct in the New Silver Beach area. The lot consists of 5,228 s/f of RC zoned land located in an AE15 flood zone. The current dwelling is a 1 story, 3-bedroom home with a detached shed. The nonconformity to the front yard setback is 4.7'. The detached shed is nonconforming on both sides, and the lot coverage by structures is nonconforming at 27.98%. The property has been owned by the applicant's family since the 1960's. The structure will be compliant with the flood zone, where the structure will need to be elevated, so all habitable space be located at least 1' above the flood zone. The garage will be underneath the house. The proposed height is 34'6", where the maximum allowed is 35 feet. There is no septic, as the property is on Town sewer. The front yard setback will be improved to 5' to the steps, and improved from 9' to 20' to the front of the structure. There will be a slight improvement to the lot coverage by structures at 27.96%. We have reviewed the correspondence and would like to review those concerns. The total lot coverage will be greatly reduced from 34.18% to 27.96%. This house will not be an outlier, as compared to some of the other surrounding homes. Many of the homes within this area are proposing to do the same, as they need to come into compliance with the flood zone. This project as proposed is a significant improvement to the existing conditions, and meets the criteria of 240-216.

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**Board Discussion –**

Morse – What is the actual elevation you are going to?

Klauer – They will come up about 8' to have the garage underneath.

Morse – Ridge Height?

Klauer - 34'6'.

Dugan– Did they consider doing something longer instead of wider?

Klauer – They can't because of the wetland buffer at the back of the house.

Barry – What are the heights of the houses next to them?

Klauer – I don't know.

Maura Leddy 105 Silver Beach Ave., property owner – To my understanding they are 1 level homes which is similar to our house now.

Barry – There are 2 drywells in the back, are there drywells planned for the front?

Klauer – I believe everything is set to run to the drywells in the back.

Thomas Bunker (project engineer) – The pipes run from the front to back.

Barry – Will there be gutters?

Bunker – Yes, I believe so.

Barry – I went to this site, what is the distance between the proposed (stake) to the white fence on the side lot line?

Klauer – 10.5 feet.

Barry – On the plan, where is the wetland?

Klauer – It runs through the back yard.

Hurrie – What is the current side yard setbacks?

Klauer – The existing side yard on the right side is 14.3', and on the left is 12.7'.

Dugan – Front yard is 4.7' going to 5'?

Klauer – Yes and the house is going from 9' to about 20'.

Barry – Total square footage without shed.



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Klauer – 1,207s/f.

Barry – As proposed?

Klauer – 1,462 s/f.

Barry – How did you get that number for the proposed house?

Klauer – The proposed lot coverage by structures is the calculation without the shed.

Barry – I'm looking for habitable living space.

Klauer – Just the house is 981s/f existing and proposed at 1,088s/f.

Morse – Do you have pictures of the houses on either side?

Klauer – No, we wanted to take pictures of houses that are like the proposed.

**Public Comment –**

James Heller, 101 Silver Beach Ave – My main concerns are the increased height and bulk of the house in relation to the lot, and the rest of the houses in the immediate area. Some of the houses that were just shown had much bigger lots. I submitted pictures of the immediate surrounding properties. My biggest concern is the overpowering design of the house in such close proximity. We have a shower on the outside of the house, and I feel like we would have less privacy with them having 2<sup>nd</sup> and 3<sup>rd</sup> level decks. I have no problem with them improving the home. However, I think it will interfere with our views, vista, breeze and sunlight. The actual bulk and living space are considerably more.

Dugan – Do you have view rights?

Heller – Not that I'm aware of.

Klauer – We submitted lot comparisons, and it seems to be within an appropriate range; there are 17 homes with a larger building area, and 10 with larger footprints. I think more and more homes will have to come into compliance with the flood zone standards.

Hurrie - Are you aware of the number of houses that have had to come into flood zone compliance within the area?

Klauer – I'm not sure.

Dugan – Any landscaping proposed?

Klauer – There will be, I don't think there was a formal landscape plan proposed.

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Dugan – I had some concerns about the bulk, but they have some constraints they are dealing with. With the setbacks on the site, you're not going to get cars there. I would do a conditional approval.

Barry – I took a close look at the property and the whole neighborhood. Just the fact of how close the proposed house will be is a concern. I would have a hard time approving.

Van Keuren – I think it's a plus, especially to get the cars off the street and into a garage.

Morse – Given the FEMA restriction and the wetland, I would agree with Bob to conditionally approve.

Hurrie – I would agree, we have seen this over the last few years where houses have had to come into flood zone compliance. The lot has Conservation restrictions. Down the line, the whole neighborhood will be at that height. I am sympathetic towards the neighbors. The Applicant is within what is allowed for setback and lot coverage

Dugan – It's unfortunate because there will be an impact on views. This is a unique case because of the wetland buffer.

Dugan made a motion to close the hearing. Van Keuren seconded the motion. Motion carried 5-0.

Dugan made a motion to approve application #086-19. Van Keuren seconded the motion. Motion carried 4-1.

**Findings:**

- 1) Meets 240-3 and 240-216
- 2) Increases utilization
- 3) Within AE15 flood zone
- 4) Marsh buffer in the back is a constraint
- 5) Connected to town sewer
- 6) 3 Bedrooms
- 7) Shed to be removed
- 8) Minor improvement to setbacks
- 9) Raised an additional 4' to have a garage underneath; parking in area is limited
- 10) Drywells in the back for stormwater runoff
- 11) Neighbor does not have view rights
- 12) Reduction in lot coverage by structures, and lot coverage by structures, parking and paving
- 13) Setback from 9' to 20' to actual house; 4.7' to 5' for steps

**Conditions:**

- 1) As-built showing lot coverage and setbacks
- 2) Height certification at framing, with copy to Building and Zoning Board of Appeals
- 3) Comply with engineering comments
- 4) Max of 3 BR

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- 5) Shed shall be removed and not replaced
- 6) All construction materials to stay on site

All in favor: 4-1; (Barry in opposition)

Application #	Applicant Name:	Address:
089-19	McFarlane	34 Hudson St. Teatick vt
Document (s) Submitted	Date Submitted:	Submitted By:
Application/fee	12/17/19	(SW)
(5) Copies plot plan	12/17/19	(SW)
(5) sets Ex/Proposed	12/17/19	(SW)
Renderings	12/17/19	(SW)
Email re. h/c	12/17/19	(SW)
Request referrals	12/17/19	(SW)
Request abutters	12/17/19	(SW)
Referral - Health	12/17/19	(SW)
Referral - Planning	12/17/19	(SW)
Referral - Assessment	12/24/19	SW
Referral - Fire	1/6/20	(SW)
Cert. abutters list	12/24/19	(SW)
ConCom referral	1/21/20	(SW)
Eng referral	1.17.20	(SW)
lot coverage w/ SAT	1.20.20	(SW)
Email in support	1.29.20	(SW)
letter of support	1.31.20	(SW)

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Absent: Foreman, Potamis**

**#089-19 McFarland, 34 Hudson Street, Falmouth** – requesting a special permit to construct an addition, creating a garage and habitable space

Voting members: Hurrie, Dugan, Van Keuren, Barry, Morse

Dugan read the 'Notice of Public Hearing' into the record and read the following referrals:

Health – Property is on Town Sewer and is allowed up to 4 bedrooms. Defer to the Wastewater Division for more comments

Planning – no comment

Assessors – no comment

Fire – no comment

Conservation – Outside Conservation jurisdiction

Engineering – standard comments; obtain driveway permit, condition addition of drywells, rain garden or other stormwater infiltration measure

**Correspondence** – 2 letters of support

Dan Goodenow, architect for project – They have owned the house for about 40 years, and are looking to sell their current house to move here full time. We are seeking a permit for an increase in lot coverage from 17.98% to 24.80%. The addition will include a 1-car garage. The entrance was originally 2-4 steps; that has been removed and an at-grade entrance was created. The deck is exactly what they have now except it will be in a different location. To the south we will maintain the setback of 19.4'; therefore there will be no shadowing created. The front yard setback will be changed from 35' to 29.7'. The rear setback will be reduced, but will remain well over 50'. There is an existing pool, and no change is proposed to that. No increase in structure height; same ridge line as existing.

**Board Discussion** -

Dugan – I noticed the fence goes onto the abutter's property, if this gets approved, they will have to move it back onto their property.

Hurrie – You are getting rid of 1 shed, is the other shed for the pool?

Goodenow – Correct, it houses the pool supplies.

Hurrie – Height?

Goodenow – Will remain the same as existing.

**Public Comment** - none

Morse made a motion to close the hearing. Van Keuren seconded the motion. Motion carried 5-0.

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Dugan made a motion to approve application #089-19. Van Keuren seconded the motion. Motion carried 5-0.

**Findings**

- 1) Meets 240-69 E. and 240 - 216
- 2) Lot coverage will be increased from 17.98% to 24.80%
- 3) House on sewer
- 4) 3 bedroom existing, 1 being added; max number of bedroom is 4
- 5) Plot plan shows fence on adjacent property
- 6) Height will be the same at 20' 10 ¾
- 7) Comply with Engineering comments
- 8) Remove 1 shed and front steps; shed not to be replaced
- 9) Submitted lot coverage calculations for the area
- 10) No objections; 2 letters of support

**Conditions**

- 1) As built for lot coverage and setbacks
- 2) Comply with engineering comments; addition of drywells, driveway permit,
- 3) 4 bedroom max; property is sewer
- 4) Fence shall be relocated onto applicant's property

All in favor 5-0.

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**Open Meeting:**

- 1) Vote minutes of 1/9/20 and 1/23/20  
Dugan made a motion to approve 1/9/20 minutes. Morse seconded the motion. Motion carried 5-0; 1/23 - tabled
- 2) Review draft decision with possible vote - #058-19 DeSangro, 26, 30,36 & 40 Crooked Meadow Road, Hatchville  
Board discussed language and proposed findings / conditions of draft decision  
Stockman – I will make these changes and we will vote it next week, February 13, 2020
- 3) Board Discussion regarding approval of excused absences with vote anticipated -  
Hurrie – Potamis will be in Florida for an extended time. We discussed this at last meeting but need to vote it.  
Dugan – From when this started to now, it's been drawn out for February, March and now it is going into April. There are other issues in the letter that he sent to out to us that I believe are problematic. With a permitting Board, missing the consecutive hearings is where you get into trouble. There are several statements in Gerry's letter that are incorrect. It was my understanding that he went away every year. It could be up to 12 weeks that he may miss. I think 4 consecutive meetings are problematic. We must make schedule changes to accommodate them. I would vote that it's an unexcused absence. The Selectmen must appoint an Associate Member within 30 days, and then advertise for that associate members position.  
Hurrie – There is the concept of good cause. I don't think we are creating a precedent no matter how we vote. We can put it on a future agenda item.  
Morse – The board does have to take some time to write and approve a policy. We can put it on a future agenda to discuss the language. I wouldn't be in favor of excusing his absence.  
Dugan made a motion to deny member Potamis's request for excused absences. Van Keuren seconded the motion. Roll call Morse: Aye, Hurrie: Aye, Van Keuren: Aye, Dugan: Aye, Barry: Aye. Motion carried 5-0.
- 4) Board Discussion –  
Dugan - I think we really must go over conduct issues, and we can review them. There have been things in the file that could possibly be appealable. I think we need to go over Open Meeting rules too. I think a lot of things have gotten lax. It's so easy to lose control over a meeting.  
Morse – I think we can find a balance.  
Barry – I hear people asking where we are number-wise on units, it would be nice to have that.  
Morse – We are limited on 40b's, just because neighbors aren't happy with it doesn't mean we can just shut them down.  
Barry – There is also room for negotiations.  
Hurrie – I think it's important to get those out on the 1<sup>st</sup> meeting.  
Dugan – I think at an upcoming agenda we should discuss automatic peer review on 40b's. I think engineering review is a must.
- 5) Board Updates - none

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- 6) Future Agenda Items – Next Meeting February 13, 2020 @6:30**

Meeting adjourned @9:30 PM.

Respectfully submitted,

Ashley DeMello, Office Assistant

Zoning Board of Appeals