

Zoning Board of Appeals Decisions Decisions for: 06-25-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 33-15

APPLICANT(S)/OWNER: ROGER FORMAN AND MARY GWEN FORMAN
of Attleboro, MA

DEED/CERTIFICATE: Certificate #205523 – LC Plan 47E, Lot 32

SUBJECT PROPERTY: 116 Bywater Court, Falmouth, Massachusetts
Assessor's Map: Map 47, Section 05, Parcel 029, Lot 032

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 3, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raise the pre-existing nonconforming single-family dwelling above flood zone and build a garage below the dwelling on subject property known as 116 Bywater Court, Falmouth, Massachusetts.
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 28, 2015.
4. The public hearing was terminated on June 25, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate John Sutherland made a decision to Grant the Special Permit with conditions. Minutes of the hearing are on file with the Board of Appeals.
5. The applicant was represented at the hearing by Thomas J. Bunker, PLS with BSS Design, Inc., 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

6/24/2015 E-mail to ZBA from Robert Ryter of 72 Bywater Court in support of the applicant's revised plans.

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

4/3/2015 Thomas J. Bunker, PLS of BSS Design, Inc. submitted to the Board of Appeals an application with plans, letter of authorization from property owner and a fee.

4/7/2015 Thomas J. Bunker submitted a letter with photos of existing dwelling showing elevation of 28' with existing grade of 5.5'.

5/27/2015 Thomas J. Bunker submitted lot coverage computations sorted by bulk to the file.

6/18/2015 Thomas J. Bunker submitted revised lot coverage computations sorted by bulk after revision of

plans.

Letters/Referrals/E-mails from Town Departments

4/6/2015 Referral submitted by Assistant Town Planner with no comment.

4/28/2015 Referral submitted by Engineering Department with standard comments and noting that the driveway is proposed with a change and that the applicant is required to submit application to Engineering for approval; and that no stormwater runoff onto public way or abutters is allowed.

5/7/2015 Referral submitted by the Building Commissioner with no comment.

5/8/2015 Referral submitted by the Board of Health Agent that the subject property is on the Town sewer.

Plans submitted by Applicant/Applicant's Representative

6/18/2015 "Plot Plan House Reconstruction" prepared for Roger & Gwen Forman 116 Bywater Court, Falmouth, Massachusetts – drawn by BSS Design, Inc. stamped and signed by Thomas J. Bunker, PLS – dated April 2, 2015 with a final revision date of June 18, 2015 and with a Board date 'received' stamp of June 18, 2015;

"Additions & Alterations to The Forman Residence 116 Bywater Court Falmouth, MA 02540" – drawn by Giampietro Architects consisting of Drawings: Sheet No. A1 'Elevations' dated 4/6/2015 with a final revision date of 6/17/2015 and a Board date 'received' stamp of June 18, 2015; Sheet No. A2 '1st Floor & 2nd Floor Plans' dated 4/6/2015 with a final revision date of 6/17/2015 and a Board date 'received' stamp of June 18, 2015; Sheet No. A3 'Foundation & Basement Plans' dated 3/19/2015 and with a Board date 'received' stamp of April 3, 2015; Sheet AB1 'As-Builts' dated 4/6/2015 and with a Board date 'received' stamp of May 21, 2015; and Sheet No. AB2 'As-Builts' dated 4/6/2015 and with a Board date 'received' stamp of May 21, 2015;

Hearing: May 28, 2015

Thomas J. Bunker, PLS with BSS Design, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed raising of the dwelling, addition of garage and addition to the second floor of dwelling. Mr. Bunker stated that the structure is nonconforming due to the front setback to Bywater Court of 20' and that the lot coverage by structures is nonconforming at 27.68%. Mr. Bunker explained the proposed plan of the proposed garage below the raised dwelling to meet flood standards, the addition of a master bedroom in the second floor, making the existing four bedroom dwelling into a five bedroom dwelling. The proposed changes to the site will slightly decrease the lot coverage by structures to 27.21%. The height of the structure will be 34'9" – still below the 35' maximum height allowed.

The Board discussed plans with Mr. Bunker and questioned the space created on the ground level and addition to second floor, as well as the need to keep the shed.

Mr. Bunker stated that the property is in the flood zone so the ground level can only be used for storage. The mechanicals will be located on the floor. He said that the applicants would like to keep the shed.

Chairman Foreman asked for any public comment in support or opposition of the proposed additions.

Robert Ryter of 72 Bywater Court (property behind subject property) stated a concern with the nature of the bulk and the possibility of their view being impacted due to the raised deck proposed with a roof. Mr. Ryter stated that his [Ryter's] engineer met with applicant's architect to discuss lowering the proposed deck.

Board discussed the proposed bulk and questioned Mr. Bunker on the possibility of lowering the height or reducing size of second level. Mr. Bunker said he will discuss with the applicant.

Member Van Keuren made a motion to continue the hearing to June 25, 2015 at 6:30 PM. Member Hurrie seconded the motion. Motion carried 5 - 0.

The Board finds that the area created behind and at the side of the garage below the dwelling will be used for storage and not living space due to the flood zone regulations. The Board further finds that all mechanicals and utilities will be located on the second level of the dwelling.

The Board finds that the applicant worked with the abutter to lessen any impact due to proposed changes to the dwelling on subject property. The Board further finds that the applicant addressed the Board's concerns of the bulk of the dwelling through the proposed plans and revised said plans to lessen any impact in the neighborhood. Furthermore, the applicant gave testimony that the abutter [Ryter] is now in support of the proposed plan as revised.

In addition to the above findings, the Board finds that the proposed 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 changes discussed herein as the nonconforming setback to the front property line will be slightly improved and the lot coverage by structures will be slightly improved.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- C. There will be no impact on traffic flow and safety as there is no change in the location of the existing driveway on site and the addition of one bedroom will not increase the traffic to and from the site.
- 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; there will be minimal impact on a view from abutting property and roadway.
- E. The subject property is connected to the Town sewer according to the referral submitted by the Board of Health Agent and Town records.
- 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 updating of water system.
- G. The proposed changes to the dwelling 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.

Member Sutherland made a motion to Grant the Special Permit with conditions. Member Hurrie 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 the Special Permit to Roger and Mary Gwen Forman (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raise the pre-existing nonconforming single-family above the flood zone and construct a garage below the dwelling on subject property located at 116 Bywater Court, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raising of the pre-existing nonconforming single-family dwelling, construction of a garage below the dwelling, addition to the second floor, all setbacks, height of structure, lot coverage and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- Plot Plan House Reconstruction" prepared for Roger & Gwen Forman 116 Bywater Court, Falmouth, Massachusetts – drawn by BSS Design, Inc. stamped and signed by Thomas J. Bunker, PLS – dated April 2, 2015 with a final revision date of June 18, 2015 and with a Board date 'received' stamp of June 18, 2015;

- "Additions & Alterations to The Forman Residence 116 Bywater Court Falmouth, MA 02540" – drawn by Giampietro Architects consisting of Drawings: Sheet No. A1 'Elevations' dated 4/6/2015 with a final revision date of 6/17/2015 and a Board date 'received' stamp of June 18, 2015; Sheet No. A2 '1st Floor & 2nd Floor Plans' dated 4/6/2015 with a final revision date of 6/17/2015 and a Board date 'received' stamp of June 18, 2015; Sheet No. A3 'Foundation & Basement Plans' dated 3/19/2015 and with a Board date

'received' stamp of April 3, 2015; Sheet AB1 'As-Builts' dated 4/6/2015 and with a Board date 'received' stamp of May 21, 2015; and Sheet No. AB2 'As-Builts' dated 4/6/2015 and with a Board date 'received' stamp of May 21, 2015;

- 2. 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.
- 3. The Applicant shall meet the requirements of the DPW Water Division.
- 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 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.)
- 5. 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: 33-15

Applicant: ROGER FORMAN and MARY GWEN FORMAN
of Attleboro, MA

Subject Property: 116 Bywater Court, Falmouth, MA
Map 47, Section 05, Parcel 029, Lot 032

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 Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Kenneth Foreman, Board Chairman

_____ 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.

Notes:
SP 33-15 / Forman / Filed w/ Town Clerk 7/2/15