

## Zoning Board of Appeals Decisions Decisions for: 09-01-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 079-16

APPLICANT/OWNER(S): ROBERT E. CHASE & MARY E. CHASE,  
TRUSTEES of The Mary E. Chase Trust

SUBJECT PROPERTY: 2 Brockton Street, Teaticket, Massachusetts  
Assessor's Map: Map 46A, Section 08, Parcel 000, Lot 046

DEED/CERTIFICATE: Book 25551 / Page 250

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 20, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the second floor of the pre-existing nonconforming single-family dwelling on subject property known as 2 Brockton Street, Teaticket, 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 September 1, 2016.
4. The public hearing was terminated on September 1, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Members Ed Van Keuren and Paul Murphy and Associate Gerald Potamis sitting as voting member, made a decision to Grant the Special Permit with Conditions. Minutes of the hearing are on file in the Board of Appeals office and with the Town Clerk.
5. The applicant was represented at the hearing by Stephen O. McKenzie, 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)

7/20/2016 Pat Sciuto with Harbor Homes submitted, on behalf of the applicant, an application, fee, letter of authorization, and four sets of plot and architectural plans for proposed addition.

9/1/2016 Applicant submitted to the file a new letter of authorization allowing Stephen O. McKenzie to come before the Board of Appeals on their behalf.

Letters/Referrals/E-mails from Town Departments

7/21/2016 Referral from the Planning Department Staff submitted to the file with no comment.

7/21/2016 Referral from the Town Assessor submitted to the file with the comment: includes Lot 46 and 47.

7/26/2016 Referral submitted to the file from Falmouth Fire Rescue Department with no comment.

7/28/2016 Referral submitted to the file from the Conservation Commission Agent Kasprzyk that states: RDA approved project 2/10/16 by ConCom with letter from John Martin, PE certifying existing foundation shall remain in place. If building department requires tear down, must meet V-zone regulations requiring NOI.

8/16/2016 Referral from the Engineering Department (S. Schluter) submitted to the file that states: This application was reviewed only for impacts to public right of ways and public utilities. Brockton St is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. 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. We recommend adding dry wells, rain garden or other stormwater measure (or connect to what appears to be an existing system if appropriately sized) for the roof because the front yard appears to drain towards Brockton St. and Little Pond.

Plans submitted by Applicant/Applicant's Representative

"Site Plan of Land" prepared for Robert and Mary Chase showing the proposed addition as drawn by John P. Doyle, III – stamped, signed and dated January 8, 2016 with a Board date 'received' stamp of July 20, 2016; and

"Addition/Renovation Design – Chase Residence 2 Brockton St. Falmouth, MA" as drawn by Architecture by SPB consisting of Drawing A1 – proposed elevations, Drawing A2 proposed floor plans – both with a revised date of 6/28/2016 and a Board date 'received' stamp of July 20, 2016.

Hearing: September 1, 2016

Mr. McKenzie reviewed the site conditions noting that the steps of the main access to the dwelling structure are 5.5' from the front property line off Brockton Street, a 12' from the structure to the property line off Little Bay Street and lot coverage by structures is nonconforming at 25.1%. He reviewed the proposed addition to the second floor that will be no more than 200 square feet in size that will create a new bedroom space. There are five existing bedrooms and two baths currently; three bedrooms on the first floor and two bedrooms on the second level – one bathroom on each level. One of the bedrooms on the second level will become a master bathroom, thereby not increasing the bedroom count. Mr. McKenzie explained that the property is within the velocity zone so the applicant is limited to a 200 square foot addition; anymore of an addition and the applicant will be required to meet all flood zone regulations. There will be no change in the footprint of dwelling structure and no increase in lot coverage by structures through this application. There are four drywells installed on the property – one at each corner of the dwelling structure. The property is attached to Town sewer.

The Board discussed the proposed plans with Mr. McKenzie. All questions and concerns were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed addition to dwelling on subject property. There was no public comment.

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

Chairman Bielan 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 2 Brockton Street in Teaticket contains 6,246 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an addition to the second floor of the pre-

existing nonconforming single-family dwelling on subject property. The existing single-family dwelling has five bedrooms and two bathrooms. The proposed addition on the second level will take one of the existing two bedrooms to create a new master bathroom and the addition will create a new bedroom; thus no increase in the number of bedrooms within the dwelling. Because the subject property lies within the Velocity zone, the addition can be no more than 200 square feet pursuant to Section 240-82 B. of the Code of Falmouth. The proposed addition is 200 square feet. There will be no increase in the existing footprint of the dwelling and the nonconforming lot coverage by structures of 25.1% will not be increased through this special permit request.

Section 240-3 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 finds that the proposed addition to the second floor of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed addition to the second floor will not increase the existing footprint of the dwelling, it will not increase any nonconforming setback and it will not increase the nonconforming lot coverage by structures on subject property. Furthermore, the Board finds that the existing subject dwelling has five bedrooms and two bathrooms and that the proposed addition represented herein will not increase either the bedroom or bathroom count existing.

The Board finds that the subject property is located within a Velocity Zone and that the application, according to the plans submitted and testimony by the applicant's representative, will be in compliance with Section 240-82 of the Code of Falmouth "Applicability" [Floodplain Zone – Article XVIII] as the addition does not exceed the 200 square feet of gross floor area of the dwelling structure as defined in sub-section B. of said section and under Section 240-13 of the Code of Falmouth – "Definitions" – 'Substantial Improvement'.

The Board further finds through testimony by the applicant's representative that there are four drywells existing on subject property – one at each corner of the existing dwelling structure.

In addition to the above findings, the Board finds that the proposed addition to the second floor of the pre-existing nonconforming 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 addition to the existing second floor as the addition will not increase any existing nonconformity on subject property and it will not create any new nonconformity on subject property.
- B. The site is suitable for the proposed use as the property is zoned residential and the existing single-family dwelling will remain a single-family dwelling.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on 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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The subject property is on Town sewer.
- 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 if necessary.
- G. The proposed addition 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.

The Board of Appeals has weighed the effects of the proposed addition to the second floor of the existing single-family dwelling on subject property 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 Van Keuren 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 Robert E. and Mary E. Chase, Trustees (herein referred to as applicant) pursuant to Section 240-3 C. of the Code of Falmouth to construct an addition of no more than 200 square feet to the second floor of the pre-existing nonconforming single-family dwelling on subject property known as 2 Brockton Street, Teaticket, Massachusetts. This decision shall be subject to the following conditions:

1. The addition to the second floor, all setbacks, lot coverage, drywell installation and use of second floor shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan of Land" prepared for Robert and Mary Chase showing the proposed addition as drawn by John P. Doyle, III – stamped, signed and dated January 8, 2016 with a Board date 'received' stamp of July 20, 2016; and

- "Addition/Renovation Design – Chase Residence 2 Brockton St. Falmouth, MA" as drawn by Architecture by SPB consisting of Drawing A1 – proposed elevations, Drawing A2 proposed floor plans – both with a revised date of 6/28/2016 and a Board date 'received' stamp of July 20, 2016.

2. There shall be no more than five (5) bedrooms allowed on subject property.

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 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 may reverse the permit and that any construction performed under the permit may be compelled to be removed.)

6. 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: 079-16

Applicant: ROBERT E. CHASE and MARY E. CHASE  
TRUSTEES of The Mary E. Chase Trust

Subject Property: 2 Brockton Street, Teaticket, Massachusetts  
Map 46A, Section 08, Parcel 000, Lot 046

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.

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Terrence J. Hurrie, Clerk, Board of Appeals

\_\_\_\_\_ 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 079-16 Chase, Trustees / Filed w/ Town Clerk 9/9/16