

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 073-17

APPLICANT/OWNER: FAGGIO L.P. of Waltham, MA

SUBJECT PROPERTY: 117 Surf Drive, Falmouth, Massachusetts
Assessor's Map: Map 47, Section 05, Parcel 046, Lot 026

DEED/CERTIFICATE: Certificate 213571 – Plan 47-E, Lot 26

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 22, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 117 Surf Drive, Falmouth, 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 October 5, 2017.
4. The public hearing was closed on October 5, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Alternate Gerald Potamis (sitting as voting member) made a decision to Grant the Special Permit with conditions. 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 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)

08/22/2017 Attorney Kevin P. Klauer II submitted an application for special permit on behalf of the applicant which included, letter of authorization, fee, copies of plans (architectural and site plans – existing and proposed), photographs of existing structure and filing fee

- 09/28/2017 Attorney Klauer submitted to the file a letter dated September 28, 2017 to the Board of Appeals with revised Site Plan, revised architectural plans and spreadsheet regarding surrounding properties
- 10/05/2017 Attorney Klauer submitted to the file a letter dated September 28, 2017 to the Rod Palmer Building Commissioner regarding subject property and designation of what is the front property line on subject property – Commissioner Palmer agreed by his signature on the third page that the front yard setback to Surf Drive will be designated as the primary front yard of subject property (thereby making Bywater Court a rear yard setback)

Letters/Referrals/E-mails from Town Departments

- 08/23/2017 ZBA staff submitted to the file a copy of previous Special Permit #2786 approving construction of a garage in 1977
- 08/24/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/24/2017 Referral submitted to the file from Planning Department staff with no comment
- 08/28/2017 Referral submitted to the file from the Director of Assessing with no comment
- 09/06/2017 Referral submitted to the file from Conservation Commission that notes there is a Notice of Intent Hearing scheduled for 9/13/2017
- 09/26/2017 Referral submitted to the file from Town Engineering Department with standard comments and additional note: *We strongly recommend that the address for this house be changed to a Bywater Court address since there is no access off Surf Drive and the number is currently displayed on Bywater Court which is where the new number will likely be posted; this can be done at Engineering.*
- 10/03/2017 ZBA staff submitted to the file photos of dwellings in the general vicinity of subject property for comparison of building stories

Note: Referrals were sent by ZBA to Assessors, Building Department, Conservation Commission, Engineering, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Existing Floor Plans” – hand drawn – one page – with a Board date ‘received’ stamp of August 22, 2017;

“Proposed Site Improvements” 117 Surf Drive in Falmouth, MA 02540 consisting of Sheet 1 of 5 ‘Cover Sheet’ final revised date of 9/20/17 – stamped and signed by Matthew C. Costa, PLS, Sheet 2 of 5 ‘Legend Sheet’ dated 8/16/2017 – stamped and signed by Matthew C. Costa PLS, Sheet 3 of 5 ‘Existing Conditions Plan’ dated 8/16/2017 – stamped and signed by Matthew C. Costa, PLS, Sheet 4 of 5 ‘Proposed Conditions Plan’ final revised date of 9/20/2017 – stamped and signed by Matthew C. Costa, PLS and Sheet 5 of 5 ‘Notes Sheet’ with final revised date of 9/13/2017 – stamped and signed by Matthew C. Costa, PLS – all Sheets have a Board date ‘received’ stamp of September 28, 2017;

“Faggio L.P. 117 Surf Drive, Falmouth, MA” architectural plans drawn by Longfellow Design-Build and consisting of Drawing A.001 ‘Overview’ dated 9/14/2017, Drawing A.100 ‘Ground Floor Plan’ dated 9/14/2017 – both plans with a Board date ‘received’ stamp of 10/5/2017; and

“Faggio L.P. 117 Surf Drive, Falmouth, MA” architectural plans drawn by Longfellow Design-Build and consisting of Drawing A.101 ‘First Floor Plan’ dated 9/14/2017, Drawing A.102 ‘Second Floor Plan’ dated 9/14/2017, Drawing A.201 ‘Reflected Ceiling Plans’ dated 9/14/2017, Drawing A.301 ‘Sections’ dated 9/14/2017, Drawing A.401 ‘Elevations’ dated 9/14/2017 and Drawing A.402 ‘Elevations’ dated 9/14/2017 – all Drawings have a Board date ‘received’ stamp of September 28, 2017.

Hearing:

Attorney Klauer reviewed the existing site and proposed reconstruction of the single-story, three-bedroom single-family dwelling that will be replaced with a two-story, four-bedroom single-family dwelling. The property is within the Velocity Zone (VE15) and therefore the reconstruction of the dwelling will be constructed according to FEMA regulations; the joists supporting the 1st floor of the dwelling will be at elevation 17. The proposed footprint is smaller than existing footprint and the height of the proposed will be 34’4”. Attorney Klauer explained due to the requirements for construction in a velocity zone, the proposed structure will have some shadow effects that may affect abutting properties to the east and west. The dwelling will have an elevator from the ground level (garage and storage space) to service the two floors above. All mechanicals will be located on the first floor or above (see plans). The property is attached to the Town sewer system which allowed the increase of the bedroom count from three to four bedrooms as proposed. He explained that currently the property has two front property lines – Bywater Ct. and Surf Drive – and that he contacted the Building Commissioner (Rod Palmer) who designated the front yard as Surf Drive. All setbacks, with the front yard being designated as Surf Drive by the Building Commissioner will be in compliance Section 240-68 A. and B. of the Code of Falmouth. Lot coverage by structures existing at 24.9% will be reduced to 24.2%.

Attorney Klauer explained that the project has been before the Conservation Commission who voted to approve and issue an ‘Order of Conditions’, however, they conditioned elimination of the flood panels surrounding the proposed garage at ground level so the applicant is requesting that the Board approve the plans as submitted with a condition that the enclosed area on ground level be allowed to be decreased with administrative approval. Conservation Commission allowed the entryway, stairs and elevator at ground level to be enclosed, but denied the breakaway panels for garage space. He then reviewed the spread sheet he submitted regarding properties in the general area and how subject property as proposed is in keeping with the general lot coverage and dwelling stories of the neighborhood. He noted that out of the 29 properties in the general area (including subject property), there are 7 homes with a larger gross building area, 6 with a larger footprint than what is proposed.

The Board discussed plans with Attorney Klauer. All concerns and questions were addressed (see file for minutes).

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

There was no public comment.

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

Chairman Foreman 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 117 Surf Drive in Falmouth contains 9,354 square feet of Residential C zoned land that is not located within any overlay district. The property is located in a Velocity zone (VE15). The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling is a one-story, three-bedroom dwelling with attached garage; the proposed is a two-story, four-bedroom single-family dwelling with garage and storage space on the ground level below the dwelling. There is an elevator, stairway and entrance enclosed on ground level and breakaway panels proposed to enclose garage area. The dwelling, due to being located in a Velocity zone will be required to have the first floor habitable space at elevation 17. The applicant's representative submitted a signed statement from Building Commissioner Rod Palmer that the designation of a front property line would be off Surf Drive and the property line off Bywater Court will be a rear yard line. Based on the determination by the Building Commissioner, there are no nonconforming setbacks through the proposed reconstruction of the dwelling. The lot coverage by structures that is nonconforming will be slightly improved from 24.9% to 24.2%. The property is attached to Town sewer, which allows the increase from a three-bedroom dwelling to a four-bedroom dwelling. The overall height of the dwelling as proposed 34'4" (see plans).

Section 240-3 C. 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 raze and reconstruction of the existing single-family dwelling does not appear to be substantially more detrimental than what currently exists as the nonconforming setback to a front property line will be eliminated through a determination of *'what is the front property line'* by the Building Commissioner pursuant to Section 240-13 "Definitions" – 'Yard, front' (see file for statement); and the nonconforming lot coverage by structures of 24.9% will be slightly improved to 24.2%. Furthermore, the Board finds that the subject property, being in a Velocity zone, is required to meet FEMA regulations and as proposed, the plans appear to be an improvement to the utilization of the dwelling by its residents.

The Board finds that the subject property is hooked to Town sewer system and through testimony by the applicant's representative, the applicant will be amenable to contacting the Wastewater Department for a modification of the Town sewer hookup to insure, through construction, the pipes are maintained and free of sand and soil. The Board further finds that the Engineering Department recommended that the applicant change the address of subject property to Surf Drive. However, regardless of what the address is, it should be posted clearly (number and street name) from both Bywater Court and Surf Drive in the event emergency vehicles are called to the property.

The Board finds that applicant applied under Section 240-69 E., said section allows the Board to increase lot coverage by structures to exceed the 20% maximum allowed in a residential zone, but not to exceed 25% of lot coverage by structures. The Board further finds that the lot coverage by structures is currently nonconforming at 24.9% and will be slightly reduced to 24.2% through the proposed plans; and even though the three-story structure has a height of 34'4" as compared to what exists as a 12' tall structure, it may have a shadow effect on adjacent properties at certain times of the day. However, the dwelling has to be constructed to meet FEMA regulations (having a first floor elevation for habitable space at 17') being that it is located in a Velocity zone. Furthermore, the Board finds that the shadow impact that may be caused from the proposed height of the reconstructed dwelling may affect the abutters immediately to the east and west of subject property, and that said abutters were sent a 'Notice of Public Hearing' and had time to review the proposed plans and submit comment or concern of proposed plans.

The Board finds that the proposed reconstructed dwelling represented herein will have four (4) bedrooms and will have a height of no more than 34'4" as according to plans submitted and noted herein. The Board further finds that the proposed 'study' shown on Drawing A.101 'First Floor Plan' of the plans submitted shows a cased opening of five feet (5') and that a proposed 'sitting room' shown on Drawing A.102 'Second Floor Plan' of the plans submitted shows a cased opening of approximately six feet (6') and that said openings shall be maintained at all times so as not to be used as a bedroom above and beyond the four (4) allowed through this approval.

The Board finds through testimony by the applicant's representative that the application has been before the Conservation Commission and is awaiting a written approval in the form of 'Order of Conditions'. The applicant's representative explained that the plans before this Board show breakaway panels on the ground level to enclose the garage area as well as an enclosed area for the elevator, stairway and front entry; that the Conservation Commission will not approve the breakaway panels that enclose the garage thereby reducing the ground level square footage (not habitable space per FEMA regulations) which varies from the plan submitted to this Board; and that the applicant is weighing its options based on Conservation's written decision. The Board further finds that the applicant's representative requested that the Board condition administrative approval for any change of the ground level square footage area (removal of the breakaway panels if that is final determination by Conservation Commission) in the event of the need to remove said panels from the plans submitted and approved herein.

The Board finds through plans submitted and through applicant representative's testimony that there is no intent to locate a shed or other accessory structure on subject property.

In addition to the above findings, the Board finds that the proposed reconstruction of the single-family dwelling represented herein 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 reconstructed dwelling as there will be no nonconforming setbacks under Section 240-68 A. and B. of the Code of Falmouth; and the existing nonconforming lot coverage by structures will be slightly reduced from 24.9% to 24.2%.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained herein as a four-bedroom single-family dwelling through this special permit approval.

C. There will be no impact on traffic flow and safety due to the improvements made on subject property; however there is an increase of one bedroom within the proposed dwelling that should not impact the use as a single-family dwelling and the traffic to and from the property. 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; and there is no impact on any view or vista from the roadway or abutting properties – it is noted that there were no comments submitted to the file or at the hearing from abutting properties within the general area of subject property.

E. The subject property is on Town sewer and the applicant will be responsible to file as a modification to the Wastewater Department regarding changes proposed on subject property.

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 service as there was no referral submitted to the file from the Water Department.

G. The proposed dwelling reconstruction 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 raze and reconstruction of the single-family dwelling 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 Potamis 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 **5 – 0 to Grant the Special Permit** to Faggio L.P. (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze the pre-existing one-story, three-bedroom dwelling and construction a two-story, four-bedroom single-family dwelling according to FEMA Regulations on subject property known as 117 Surf Drive, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing dwelling, construction of proposed dwelling, height of dwelling, all setbacks, lot coverage and use of the four-bedroom dwelling proposed shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Proposed Site Improvements” 117 Surf Drive in Falmouth, MA 02540 consisting of Sheet 1 of 5 ‘Cover Sheet’ final revised date of 9/20/17 – stamped and signed by Matthew C. Costa, PLS, Sheet 2 of 5 ‘Legend Sheet’ dated 8/16/2017 – stamped and signed by Matthew C. Costa PLS, Sheet 3 of 5 ‘Existing Conditions Plan’ dated 8/16/2017 – stamped and signed by Matthew C. Costa, PLS, Sheet 4 of 5 ‘Proposed Conditions Plan’ final revised date of 9/20/2017 – stamped and signed by Matthew C. Costa, PLS and Sheet 5 of 5 ‘Notes Sheet’ with final revised date of 9/13/2017 – stamped and signed by Matthew C. Costa, PLS – all Sheets have a Board date ‘received’ stamp of September 28, 2017;
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2. There shall be no shed or accessory structure allowed on subject property without approval from the Board of Appeals.
3. There shall be no more than four (4) bedrooms allowed on subject property.
4. The applicant shall file with the Wastewater Department proposed plans of raze and reconstruct as approved herein. The applicant shall file with Board of Appeals, prior to issuance of a building permit, verification of approval from Wastewater for changes proposed on subject property.

5. In the event Conservation Commission requires removal of the breakaway panels for the enclosure of ground level garage and storage area (See Drawing A.301 'Sections'), the applicant will revise the "Site Plan" and submit to the Board of Appeals for administrative approval.
6. 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.
7. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. 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: **073-17**

Applicant: **FAGGIO L.P.**

Subject Property: **117 Surf Drive, Falmouth, Massachusetts
Map 47, Section 05, Parcel 046, Lot 026**

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.



Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

OCT 18 2017

FALMOUTH TOWN CLERK

APC 3:30 pm

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.