

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 065-18

APPLICANT/OWNER: JOSE F. CHAVES of Falmouth, MA

SUBJECT PROPERTY: 27 Hatch Road, Falmouth, Massachusetts
Assessor's Map: Map 47B Section 07 Parcel 016 Lot 027A

DEED/CERTIFICATE: Certificate 165073 – Lot 27A, Plan 9480D

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 26, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct an attached two-car garage with habitable space above, exceeding the 20% lot coverage by structures on subject property known as 27 Hatch Road, 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 October 18, 2018. Note: A waiver to extend the public hearing process at the request of the applicant was signed, filed with the Town Clerk and submitted to the file.
4. The public hearing was closed on October 18, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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 present at the hearing and 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)

07/27/2018 The applicant responded to ZBA staff regarding height of proposed garage – he noted the height is 23'

Letters/Referrals/E-mails from Town Departments

- 07/30/2018 Referral submitted to the file from Planning Department staff with no comment
- 07/31/2018 Referral submitted to the file from Director of Assessing with no comment
- 07/31/2018 Referral submitted to the file from Water Department with no comment
- 08/02/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/03/2018 Referral submitted to the file from Board of Health Agent that states: *No increase in bedroom count – ok.*
- 08/06/2018 ZBA staff submitted ‘Lot Coverage / Bulk Calculations’ and photos of structures/garages for subject property and general area of said property
- 08/10/2018 Referral submitted to the file from Conservation Commission with no comment
- 08/15/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof

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

Plans submitted by Applicant/Applicant’s Representative

“Certified Plot Plan” Proposed Addition for Jose Chaves 27 Hatch Road Falmouth, MASS as drawn by Warwick & Associates Inc. dated 6/03/2018 with a revision date of 6/25/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS and has a Board date ‘received’ stamp of July 26, 2018; and

“Chaves Remodel” architectural plans as drawn by Sharon Malone-Johnson consisting of Drawing Numbers 1 of 8 through 8 of 8 – front page dated 10/18/08 – Drawings show Elevations Existing and Proposed, Proposed First and Second Floor Plans, Cross Sections and Framing Plans – all Drawings are stamped with a Board date ‘received’ stamp of July 26, 2018.

Hearing:

Mr. Chaves was present and reviewed the proposed attached two-car garage with habitable space above. Mr. Chaves explained that the existing one-story dwelling has four (4) bedrooms and the addition of the two-car garage with space above allows him to renovate existing dwelling and relocate two (2) of the four (4) bedrooms to space above the proposed garage, increase a bedroom into a larger master suite and increase the living room and kitchen areas. He noted that there will be no increase in the number of

bedrooms; that the basement is and will remain unfinished; and further that he is amenable to adding drywells as recommended on the Town Engineer's referral.

The Board discussed plans with Mr. Chaves. All concerns and questions were addressed.

Chairman Hurrie 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 Hurrie 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 27 Hatch Road in Falmouth contains 14,104 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to construct an attached two-car garage, with habitable space on second floor, exceeding lot coverage of 20% by structures on subject property. The two (2) sheds, both under 100 square feet in size, on subject property, that have existed for many years, are nonconforming due to a nonconforming setback of less than 3' to rear property line for one shed and to the side yard property line for the other shed according to a handout by the Building Department for sheds and greenhouses revised in 2013 – structures greater than 100 square feet require a setback to side and rear property of 10' pursuant to Section 240-68 B. (1) of the Code of Falmouth. The lot coverage currently is in compliance with Section 240-69 A. of the Code of Falmouth as lot coverage by structures is below the 20% maximum allowed by right. The proposed attached garage will increase lot coverage to 21.6% and therefore the applicant is before the Board of Appeals for relief under Section 240-69 E. of the Code of Falmouth.

Section 240-69 of the Code of Falmouth – “Maximum lot coverage.”, sub-section E. requires a special permit from the Board of Appeals to allow lot coverage by structures to exceed the maximum 20% allowed by right, up to, but not to exceed, 25% after the Board has taken in consideration the size and height of the structure in relation to the average size and height of structures in the neighborhood, any effect of shadowing on adjacent properties, any impact on a view or vista from a public roadway or any effect of nitrogen on a coastal embayment.

The Board finds that the proposed attached two-car garage with habitable space on second level is appropriately before the Board of Appeals under Section 240-69 E. of the Code of Falmouth to increase the lot coverage by structures up to 21.6%. The Board further finds that the project as proposed is approvable through consideration by the Board of the criteria set forth in said section as follows:

- that the proposed two-car garage with habitable space above attached to the existing dwelling is in keeping in size and height with the general neighborhood as represented on the 'Lot

Coverage / Bulk Calculations' with attached photos of dwelling/garage structures within the neighborhood of subject property that were submitted to the file by staff;

- that the proposed two-car garage structure with habitable space above attached to the existing dwelling will not have any shadow effect on adjacent properties based on its location on subject property and that of structures on adjacent property – specifically 8 Handy Lane;
- that the proposed two-car garage structure with habitable space above attached to the existing dwelling will not have any impact on a view or vista from a public roadway; and
- that there is no effect of nitrogen from any coastal embayment by the proposed two-car garage with habitable space above attached to the existing dwelling.

The Board finds that the proposed two-car garage with habitable space above attached to the existing dwelling will not increase the number of bedrooms, existing at four (4), on subject property. The Board further finds that the applicant will undertake a renovation of the existing dwelling as shown on the plans submitted and that two (2) of the existing four (4) bedrooms will be relocated to the space above the proposed two-car garage (second floor) and a new master bedroom/bath will be created as well as an increase to the existing living room and kitchen within the existing dwelling. Furthermore, the Board finds that the proposed habitable space above the two-car garage will enhance the utilization of the dwelling by its residents.

The Board finds that the existing basement of the dwelling is unfinished and no bedrooms to be created within said basement space. The Board further finds that the height of the proposed garage structure will be approximately 23' – well under the 35' maximum allowed under Section 240-70 of the Code of Falmouth.

The Board finds that if the two (2) existing sheds on subject property were to be removed, the applicant would still require approval under Section 240-69 E. as the lot coverage would still exceed the 20% through the creation of the proposed garage structure.

The Board finds through testimony by the applicant that he is amenable to installing drywells on subject property for the additional roof space of the proposed garage with second floor above.

In addition to the above findings, the Board finds that the proposed two-car garage with habitable space above (second floor) 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 two-car garage structure attached to the existing dwelling as there will be no nonconforming setbacks created and the increase in lot coverage above the 20% maximum allowed by structures in a residential district is allowed and approvable herein pursuant to Section 240-69 E. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used and maintained as a single-family residence with an attached garage through this approval of a special permit.

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 changed but 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.

E. A sewage disposal system is in place on subject property. The Board received a referral from the Board of Health with no comment (which means no concerns), however, the Board of Health is required to sign off on building permit application prior to issuance of said building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed two-car garage with habitable space above (second floor) attached to the existing 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 two-car garage with habitable space above (second floor) attached to the 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 Bielan made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Jose F. Chaves (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct a two-car garage with habitable space above (second floor) attached to the existing dwelling on subject property known as 27 Hatch Road, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The construction of the two-car garage with habitable space above (second floor) attached to the dwelling, all setbacks, lot coverage, height of proposed garage and use of garage and dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Certified Plot Plan” Proposed Addition for Jose Chaves 27 Hatch Road Falmouth, MASS as drawn by Warwick & Associates Inc. dated 6/03/2018 with a revision date of 6/25/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS and has a Board date ‘received’ stamp of July 26, 2018; and

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2. There shall be no more than four (4) bedrooms allowed on subject property.

3. The applicant shall locate drywells on subject property to maintain runoff on subject property due to proposed garage addition to dwelling as described herein. Drywells should be located at the southwesterly and southeasterly corner of the proposed garage structure so as not to have runoff to abutter's property. Exact location, in the general area as stated herein, shall be at the discretion of the applicant's engineer.
4. 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.
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 will reverse the permit and that any construction performed under the permit may be ordered undone.)
6. This permit shall lapse three (3) 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: **065-18**

Applicant/Owner: **JOSE F. CHAVES of Falmouth, Massachusetts**

Subject Property: **27 Hatch Road, Falmouth, Massachusetts
Map 47B Section 07 Parcel 016 Lot 027A**

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.



Kimberly A. Bielan, Clerk, Board of Appeals

RECEIVED

OCT 29 2018

FALMOUTH TOWN CLERK

09:45am

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.